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No. ____

In The Supreme Court of The United States

WILLIAM H. WHITEHEAD

Petitioner,

v.

BRADLEY, ARANT, ROSE & WHITE, L.L.P

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED FOR REVIEW

1. Whether Alabama state judges and justices sitting on cases to decide whether to enforce *Ala.Code*, 1975, § 12-24-1 and -2 (the "Statutes") that severely limit the amount of judicial campaign contributions they could receive without being recused on contributors' cases is a violation of the due process principles established in *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986)?

2. Whether a circuit court judge should have recused himself as a matter of *Lavoie* due process where in order to avoid recusal as a matter of law he had to decide whether to hold the Statutes unenforceable?

3. Whether the individual members of a state supreme court may as a matter of *Lavoie* due process sit on cases where an issue is whether to enforce a state recusal statute that would as a matter of law prevent them from sitting on cases in which their major campaign contributors were parties or counsel?

4. Whether as a matter of *Lavoie* due process Alabama state judges are prohibited from deciding whether or not to enforce a state statute that would severely limit their campaign contributions?

5. Whether it is a violation of *Lavoie* due process of law for Alabama judges to refuse to enforce a duly

adopted state statute that would prevent them from sitting on cases in which their campaign contributors of $4,000.00 or more are parties or lawyers?

6. Whether Alabama Supreme Court justices may constitutionally refuse to enforce a duly adopted state statute that limits their ability to obtain large campaign contributions?

PARTIES TO THE PROCEEDING

William H. Whitehead
PETITIONER

Bradley, Arant, Rose & White, L.L.P.
RESPONDENT

Robert Walthall
RESPONDENT

John E. Goodman
RESPONDENT

TABLE OF CONTENTS

Page(s)

ISSUES PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDING iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES viii

PETITION FOR A WRIT OF CERTIORARI 1

Opinion and Orders Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 6

SUMMARY OF THE ARGUMENT 13

ARGUMENT 18

I. Introduction 18

II. The Judicial Canons 22

III. Judge King Disregarded the Laws of Alabama Affirming the Statutes 27

IV. The Supreme Court of Alabama and the Statutes 28

CONCLUSION 35

APPENDIX

Supreme Court of Alabama Opinion (May 8, 2009) A-1

Order Granting Motion to Dismiss Circuit Court of Jefferson County (February 6, 2008) A-2

U.S. Supreme Court Opinion *Rabiee v. Dietz* (November 26, 2007) A-21

Supreme Court of Alabama Opinion Denying Petition for Writ of Mandamus (April 19, 2006) A-22

Supreme Court of Alabama Opinion Denying Motion to Recuse Chief Justice and Associate Justices and for Appointment of Special Court (April 19, 2006) A-24

Motion to Recuse Chief Justice and Associate Justices and for Appointment of Special Court (March 7, 2006) A-26

Order Denying Motion to Recuse Judge King Circuit Court of Jefferson County (February 1, 2006) A-36

Second Supplemental Submission in Support of Recusal Motion (December 30, 2005) A-50

Plaintiff's Reply to Defendants' Response to Motion to Recuse (December 16, 2005) A-52

Plaintiff's Motion to Recuse Judge J. Thomas King (November 17, 2005) A-64

First Amended Complaint (November 14, 2005) A-71

42 U.S.C. 1973b A-93

42 U.S.C. 1973c A-105

Ala.Code, 1975, § 6-5-570 . . . . . A-108

Ala. Code, 1975, § 12-24-1 . . . . . A-110

Ala. Code, 1975, § 12-24-2 . . . . . A-111

Ala. Code, 1975, § 36-15-1 . . . . . A-114

Ala. Code, 1975, § 36-15-12 . . . . . A-116

Canon 3(C)(1)
Alabama Canons of Judicial Ethics A-117

TABLE OF AUTHORITIES

CASES:

Aetna Life Insurance Co. v. Lavoie
475 U.S. 813, 106 S.Ct. 1580,
89 L.Ed.2d 823 (1986) 1,15,16,24,25,26

Brackin v. Trimmier Law Firm
897 So.2d 207 (Ala. 2004) 33

Caperton v. A.T. Massey Coal Co., Inc.
___ U.S. ___, 129 S.Ct. 2252,
173 L.Ed.2d 1208 (2009) ... 1,13,15,16,20,21,22

Ex parte Bryant
682 So.2d 39, (Ala.Crim.App.
1996) 24,27,28,35

Ex parte Duncan
638 So.2d 1332 (Ala.1994) 23

Ex parte McLeod
725 So.2d 271 (Ala. 1998) 33,34

Ex parte Turner
792 So.2d 1141 (Ala. 2000) 28

Finley v. Patterson
705 So.2d 834 (Ala. 1997) 28,29,34

Grantham v. State
540 So.2d 779 (Ala. 1988) 28

Greene v. Jefferson County Commission
2008 WL 4892051 n.9 (Ala. 2008) 34,35

Rabiee and Whitehead v. Dietz
CV-07-H-0302-S, United States District Court for the Northern District of Alabama, Southern Division 5

Rabiee and Whitehead v. Riley and King
CV-06-P-1395-S, United States District Court for the Northern District of Alabama, Southern Division 4,5

STATUTES:

42 U.S.C. 1973b 12,14

42 U.S.C. 1973c 12,14

Ala.Code, 1975, § 6-5-570. 2

Ala.Code, 1975, § 12-24-1 21,27

Ala.Code, 1975, § 12-24-2 4,5,21,26,27,28,34

OTHER:

Rule 10(c), *Rules of the Supreme Court of the United States* 1

Rule 56(f)
Alabama Rules of Civil Procedure 5

Canon 3C, *Alabama Canons of Judicial Ethics* 4,10,18,22,23,24,26

DeBow, Michael. "The Road Back from 'Tort Hell': The Alabama Supreme Court, 1994-2004." *Federalist Society for Law and Public Policy*, October 15, 2004 11

Miller, Robert. "Buying Justice." *Forbes*, July 21, 2003 11

Rawls, Phillip. "Candidates in Alabama Supreme Court Race Top $4 M." *Chicago Tribune*, January 30, 2009 19

Velasco, Eric. "Costly High Court Races Denounced." *The Birmingham News*, February 26, 2006 11

Ware, Steven J. "Money Politics and Judicial Decision: A Case Study of Arbitration Law in Alabama." 25 *Journal of Law and Politics* 645, 2001 11

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review a judgment of the Supreme Court of Alabama.

OPINIONS AND ORDERS BELOW

The opinions and orders of the Circuit Court of Jefferson County, Alabama and of the Alabama Supreme Court are not reported, but are attached hereto in the Appendix.

JURISDICTION

Jurisdiction is based on Petition for a Writ of Certiorari from a final order of the Alabama Supreme Court that has decided an important question of federal law in a way that conflicts with relevant decisions of this Court including *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986), and *Caperton v. A.T. Massey Coal Co., Inc.*, ___ U.S. ___, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009). Rule 10(c), *Rules of the Supreme Court of the United States.*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional and statutory provisions:

42 U.S.C. 1973b

42 U.S.C. 1973c
Ala.Code, 1975, § 6-5-570
Ala.Code, 1975, § 12-[illegible]4-1
Ala.Code, 1975, § 12-[illegible]4-2
Ala.Code, 1975, § 36-15-1
Ala.Code, 1975, § 36-15-12
Canon 3(C)(1), *Alabama Canons of Judicial Ethics*

These provisions are reproduced at A-93-118.

STATEMENT OF THE CASE

This legal malpractice action was filed by William H. Whitehead ("Petitioner") on July 14, 2005 in the Bessemer Division of the Jefferson County Circuit Court under the Alabama Legal Services Liability Act ("ALSLA"), *Ala.Code*, 1975, § 6-5-570, *et seq.*, against the law firm of Bradley, Arant, Rose & White, LLP ("BARW"), and two of its members, Robert Walthall ("Walthall") and John E. Goodman ("Goodman") (collectively referred to as the "BARW Defendants"), and the law firm of Haskell, Young, & Rediker ("Haskell"), and one of its members, Patricia Diak ("Diak") (collectively referred to as the "Haskell Defendants"). This appeal is against BARW, Walthall, and Goodman only and arises from the circuit court granting their motion to dismiss Plaintiff's Second Amended Complaint only as to them.

The Second Amended Complaint alleges that the Respondent lawyers and law firms are liable to Petitioner for violation of the ALSLA based on several events. In or about July of 2002, contracts which

Walthall and BARW had drawn up for Petitioner to protect his employment at and his investment in a car dealership were interpreted adversely to Petitioner by the dealership. Petitioner's employment was terminated on an allegedly at-will basis and the dealership demanded the mandatory sale to it of his stock in it at an arbitrary price. Walthall erroneously insisted that the contracts he had prepared did protect Petitioner from the dealership's claims and that the contracts were being violated by the dealership. Goodman then became involved in the representation of Petitioner. The BARW Defendants engaged in a fraudulent cover-up of their breach of the ALSLA by insisting that Petitioner fight the dealership's interpretation of the contracts although they knew that the dealership was correct and Petitioner had no legally defensible position.

The dealership challenged BARW continuing to represent Petitioner because of an alleged conflict of interest. BARW denied the conflict of interest, but told the dealership's counsel BARW would arrange new counsel for Petitioner. Goodman then convinced Petitioner to retain his wife, the Defendant Diak, to continue to represent Petitioner. Neither the BARW Defendants nor the Haskell Defendants informed Petitioner of any potential claims Petitioner had or might have against BARW. Instead, all of the Defendants continued to encourage Petitioner to fight the dealership, although they knew the dealership was right about the contracts.

On November 17, 2005, Petitioner filed his first motion to recuse the circuit judge presiding in the case, Judge Tom King, Jr., under Alabama Judicial Canon 3C, later adding *Ala. Code*, 1975, §§ 12-24-1 and -2 (the "Statutes"), based on 2001 and 2002 campaign contributions to Judge Tom King from Respondents and their lawyers. This was Judge King's last election preceding the motion to recuse. On February 1, 2006, Judge King entered an order denying the motion to recuse.

On March 8, 2006, Petitioner filed a petition for writ of mandamus in the Alabama Supreme Court seeking a mandamus ordering Judge King to grant the motion to recuse. On March 7, 2006, Petitioner filed a motion under the Statutes to recuse eight of the nine justices on the Alabama Supreme Court because each of them had received in their last election more than $4,000.00 from Respondents and counsel in this case. On April 19, 2006, the motion was denied without opinion. On April 19, 2006, the Alabama Supreme Court denied the petition for mandamus.

The circuit court stayed this case while Petitioner filed two actions in the United States District Court for the Northern District of Alabama seeking to have the federal court declare whether or not *Ala. Code*, 1975, § 12-24-2 required preclearance under the Voting Rights Act before the Statute could be enforced. The Department of Justice claimed that it did. The Alabama Attorney General claimed that it did not. The first of these cases, *Rabiee and Whitehead v. Riley and King*, CV-06-P-1395-S, United States District

Court for the Northern District of Alabama, Southern Division, was against the Attorney General of Alabama who took the position that § 12-24-2 did not require preclearance before it could be enforced, but who had taken no action to enforce it despite being the Alabama official charged with that duty. The case was dismissed without prejudice on jurisdictional grounds based on the Attorney General's agreement with Petitioner that the statute did not require Voting Rights Act preclearance before it could be enforced.

The second federal court lawsuit was *Rabiee and Whitehead v. Dietz*, CV-07-H-0302-S, United States District Court for the Northern District of Alabama, Southern Division. The court dismissed this case without prejudice on the jurisdictional ground that the plaintiffs lacked "standing" because the Alabama Office of Courts had no duty to enforce § 12-24-2 and could not injure plaintiffs by failing to do so. This latter decision was appealed directly to the United States Supreme Court under the Voting Rights Act. The United States Supreme Court affirmed.

On January 11, 2008, Petitioner filed a motion for the court to treat Respondents' motion to dismiss as a motion for summary judgment and for time under Rule 56(f), *Ala.R.Civ.P.*, to obtain discovery. The Rule 56(f) motion was supported by an affidavit from counsel.

On February 6, 2008, the trial court entered an order granting Respondents' motion to dismiss and denying Petitioner's motion to treat the BARW motion as a summary judgment motion. On the same date,

the Petitioner renewed the motion to recuse Judge King.

On February 8, 2008, Petitioner filed a post-judgment motion pointing out various errors in the order granting the motion to dismiss and requesting the trial judge to withdraw the order and to deny the motion to dismiss. On February 27, 2008, the trial court issued an order denying Petitioner's post-judgment motion.

Notice of appeal to the Alabama Supreme Court was filed on April 11, 2008.

On May 8, 2009, the Supreme Court of Alabama affirmed the trial court without opinion.

STATEMENT OF THE FACTS

The Statutes were signed into law on July 31,1995, effective January 1, 1996. The purpose of the Statutes was "to require the recusal of a justice or judge from hearing a case in which there may be an appearance of impropriety because as a candidate, the justice or judge received a substantial contribution" from a party in the case, attorneys for the party, or certain other individuals. *Ala.Code*, 1975, § 12-24-1. Under the Statutes, a contribution of more than four thousand dollars ($4,000) to the campaign of candidate for an appellate court, or more than two thousand dollars ($2,000) to a campaign for circuit judge disqualified a judge on motion of the non-contributing party. *Ala.Code*, 1975, § 12-24-2(c). The Statutes

require: (1) all Alabama state court justices and judges to file with the Secretary of State annual public statements disclosing campaign contributions; (2) the Alabama Supreme Court to promulgate rules of court requiring attorneys to serve on all counsel of record in each case certificates of disclosure stating the amount, if any, of campaign contributions made to the most recent election campaign of the presiding justice or judge by all attorneys of record, any attorney with whom they practice, their clients, and related parties; and (3) upon the filing of a written notice of recusal by the opposing party, these judges are required to recuse themselves from any case in which the attorneys, their clients, or the related parties contributed the specified amount of money to the judge's campaign.

The Second Amended Complaint charged that Petitioner retained Respondents in 1998 to negotiate and prepare contracts with an automobile dealership that would protect Petitioner's employment from at will termination and provide a means of selling Petitioner's stock in the dealership so as to protect him from arbitrary refusal to buy the stock or arbitrary pricing of the stock. Walthall represented to Petitioner that the contracts he had prepared and negotiated would accomplish these purposes and, if Petitioner entered into the contracts, he would be protected. In reliance on Walthall's assurances, Petitioner signed the contracts, invested more than $170,000.00 in the dealership, left his prior employment, and went to work.

In fact, the contracts were poorly written and did not protect Petitioner. The dealership began to demand that Petitioner sell his stock for an arbitrary price and began the process of discharging Petitioner from his job at the dealership, Petitioner presented the matter to Walthall to take action to enforce the contracts. Walthall attempted unsuccessfully to do so.

In early 2003, Goodman became involved at BARW in representing Petitioner. Goodman told Petitioner that the contracts were "poorly written" and that it would be best to try to settle the dispute with the dealership. The dealership also challenged Respondents' continued representation of Petitioner based on an alleged conflict.

Goodman and Walthall held a meeting with Petitioner at BARW's offices and informed Petitioner that Respondents would withdraw. They recommended to Petitioner that Diak, Goodman's wife, would be the ideal lawyer to replace Respondents. Petitioner retained her.

In November of 2003, Petitioner was resisting an arbitration settlement. Diak advised him to take it. Diak then informed Petitioner that she had just consulted Goodman by phone and that Goodman told her to tell Petitioner that it was Goodman's advice that Petitioner should go ahead with the arbitration "settlement" because, in Goodman's opinion, it was a "good deal".

The dealership placed an interpretation on the "settlement" that was very unfavorable to Petitioner. The Defendants disagreed and tried to place an interpretation on the "settlement" that favored Petitioner. The dispute arose because Diak negligently failed to provide language in the settlement documents suitable to protect Petitioner's position.

Petitioner obtained new counsel who informed him of the liability to him under the ALSLA of Respondents. New counsel resolved the dealership suit. Petitioner then filed this action against Respondents. This case was assigned to Alabama Circuit Court Judge King.

In his election campaign of 2002, Judge King, received from the Respondents and their counsel large campaign contributions. Alabama Fair Campaign Practices Act records show Respondents made the following contributions:

Haskell	07/16/01	$500.00
BARW	03/15/02	$1,000.00
BARW	0522/02	$1,000.00
Haskell	05/22/02	$500.00
BARW	02/25/03	$500.00

Counsel for the Respondents likewise made the following contributions:

Frank Bainbridge	06/22/01	$500.00(BARW)
Bruce Rogers	06/22/01	$250.00(BARW)
Bruce Rogers	06/22/01	$200.00(BARW)
Starnes & Atchison	06/26/01	$1000.00(Haskell)

Respondents and counsel contributed $2,500.00 to Judge King's next campaign for election in 2008. The 2008 contributions were made while BARW's motion to dismiss was pending before Judge King.

On November 17, 2005, Petitioner filed a motion to recuse Judge King on two grounds: (1) that under Canon 3C, *Alabama Canons of Judicial Ethics*, a reasonable member of the public would have grounds to question his impartiality; and (2) under *Ala. Code*, 1975, §§ 12-24-1 and 2 the opposing parties and lawyers had contributed more than $2,000.00 to his last campaign and was due to be recused on that basis.

On March 7, 2006, Petitioner filed a motion to recuse the justices of the Alabama Supreme Court from sitting on the mandamus. The motion stated that the records of the Fair Campaign Practices Act in the Alabama Secretary of State's Office showed that every member of the Court, except Justice Parker, received campaign contributions in an amount in excess of $4,000.00 from Respondents and counsel. Justice Parker received only $3,500.00. The records show the following amounts received by members of the Court from the defendants and lawyers representing them: Chief Justice Nabers - $8,500.00; Justice See - $25,000.00; Justice Lyons - $10,750.00; Justice

Harwood - $15,000.00; – Justice Smith - $9,250.00; Justice Stuart - $9,000.00; Justice Bolin - $18,000.00; Justice Woodall - $17,300.00; and Justice Parker - $3,500.00.

The Alabama Supreme Court recusal motion stated that five places on the Court were up for election in November of 2006, and the re-election efforts of the members of the Court seeking re-election would be substantially hampered by a ruling favorable to Petitioner. The motion pointed out studies on the effect on judicial decisions of campaign contributions. For example, one study reported a strong correlation between campaign contributions and judicial decisions in arbitration law cases before the Alabama Supreme Court. "Money Politics and Judicial Decision: A Case Study of Arbitration Law in Alabama," Steven J. Ware, 25 *Journal of Law and Politics* 645, 2001. Law journals and, to an ever increasing extent, the popular media are making public such correlations. See, e.g., "The Road Back from 'Tort Hell': The Alabama Supreme Court, 1994-2004," Michael DeBow (Federalist Society for Law and Public Policy); "Costly High Court Races Denounced," Eric Velasco, *The Birmingham News*, February 26, 2006; "Buying Justice," Robert Miller, *Forbes,* July 21, 2003; "Money, Politics and Judicial Decisions: A Case Study of Arbitration Law in Alabama," Stephen J. Ware, 25 *Journal of Law and Politics* 645, 2001 (showing a strong correlation between justices whose campaigns were funded by plaintiff's lawyers opposing arbitration while those justices whose campaigns are funded by business favor arbitration.)

On April 19, 2006, the Alabama Supreme Court denied the motion without stating any reasons. The denial of the mandamus petition without opinion followed on April 19, 2006.

In 1994, the Democratic and Republican candidates for four seats on the Court spent more than $6.5 million seeking election. In 1996, two candidates for one seat spent $4.5 million; in 1996 two candidates for one seat spent $4.5 million; in 1998, seven candidates for three seats spent over $7 million; and in 2000, fifteen candidates for five seats raised over $13 million. Alabama ranks No. 1 in the United States in judicial campaign fund raising and in view of the fact that since 1993 candidates in statewise judicial elections have received more than $60 million in contributions, including $7.4 million for eleven candidates in the last election in 2004.

The Alabama Administrative Office of Courts ("AOC") has taken the position that the Statutes require preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973b and c. On January 6, 1999, Frank W. Gregory, then-Director of the AOC, wrote a letter advising that, "our office will not take any further action for noncompliance with [the statute's] provision[s]." The AOC reiterated its position in letters dated January 11,1999, March 13,2000, and June 8, 2000.

SUMMARY OF THE ARGUMENT

In the case of *Caperton v. A.T. Massey Coal Co., Inc.*, ___ U.S. ___, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009), this Court held that due process required the recusal of an appellate judge because of campaign contributions by a litigant in view of the "extraordinary situation" in that case. The Court closed its opinion by stating that, "Application of the constitutional standard implicated in this case will thus be confined to rare instances." (*Id.* at 2267).

The instant case involves an "extraordinary situation," but one not anticipated by *Caperton*. Alabama in an effort to limit the appearance of impropriety in judicial proceedings has adopted the Statutes. This Court in *Caperton* pointed out that, "Judicial integrity is, in consequence, a state interest of the highest order" and "[i]t is for this reason that states may choose to 'adopt recusal standards more rigorous than due process requires.'" (*Id.* at 2267). *Caperton* does not anticipate that these state financial restrictions would be ignored by financially interested judges.

The attempt to impose more rigorous recusal standards based on a fixed monetary amount of campaign contributions and the frustration of that attempt as the result of positions taken by three successive Alabama attorneys general and the Alabama Supreme Court is the subject of this Petition. Three consecutive attorneys general, one of whom is now a United States senator, Sessions, and one of

whom is now a judge on the United States Court of Appeals for the Eleventh Circuit, Pryor, have refused since 1996 to submit the Statutes to the Justice Department for preclearance under the Voting Rights Act. The Alabama Supreme Court has refused to obey the Statutes until they are precleared by the Justice Department. There is a 1996 appellate court opinion upholding the validity of the Statutes. This is the law of Alabama. It has been ignored.

The attorneys general and the Alabama Supreme Court have created a legal limbo for the Statutes for the last thirteen years by means of this "standoff." Under federal law, it is the state attorneys general who decide the state's position on preclearance, not the Alabama judiciary. 42 U.S.C. §§ 1973b and c.

The Alabama Supreme Court has never issued an opinion that the Statutes require preclearance. It has simply made statements *in dicta* that the Statutes have not been precleared and inferred that prevented enforcement. The Alabama Supreme Court does not have jurisdiction to decide whether or not an Alabama statute must be submitted for preclearance. (42 U.S.C. § 1973c). But, even if it did, it has made no such decision. It has just "informally" refused to obey them.

So, the attempt by the State of Alabama to provide objective standards for recusal based on the amount of campaign contributions, to enact recusal standards more strict than due process requires, and to thus strengthen the state judiciary's integrity, a

compelling state interest, has been frustrated by the very judges whose conduct the State sought to control.

This is one of the "extraordinary situations" of which this Court spoke in *Caperton*. Judge King at the trial level and the justices on the Alabama Supreme Court must be disqualified from deciding whether to enforce the Statutes. Their refusal to disqualify themselves crosses the outer bounds of due process and is one of those "rare instances" referenced in *Caperton*. The constitutional standard implicated in *Caperton* must be applied to disqualify them from deciding whether to enforce the Statutes or to apply the Statutes to this case. (*Id.* at 2267).

In *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986), an Alabama Supreme Court justice cast the deciding vote to uphold a judgment for bad faith refusal to pay a claim against an insurer. The justice was a plaintiff in a similar suit against another insurance company. This Court held the justice must be recused because his interest in the similar case "would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear and true." (475 U.S. at 825).

Petitioner respectfully submits that *Lavoie* controls this case. The various trial and appellate judges in the instant case have at least as great a temptation to protect the source of their campaign contributors as did the *Lavoie* judge. He was a plaintiff in a similar case to that which he voted on in the Alabama Supreme Court, but with different facts

against a different insurance company before a different judge. The judges' interest in raising money to be elected is more direct than in *Lavoie*.

In *Caperton, supra*, the Court held that the federal due process rights of parties in a state case were violated when a state appellate judge failed to recuse himself from participating in the case. The judge in his successful election campaign for his judicial office received substantial financial support from a corporation that would later prevail in an appeal in which the judge participated. After holding that "a basic requirement of due process" is a "fair trial in a fair tribunal," the Court qualified that holding by stating, "...most matters involving judicial disqualification [do] not rise to a constitutional level," but would generally be matters of legislative discretion regulated by statutes and judicial codes. (*Id.* at 2259).

In the instant case, the Alabama Legislature attempted to establish an objective test for recusal by the simple device of providing by statute that if a successful appellate judicial candidate received $4,000.00 or a successful trial court level candidate received $2,000.00 from a party or lawyer for a party in a case before her, the other parties must be notified and, at the non-contributing parties' election, the judge would be automatically recused. This was a beautiful solution to objectifying the money-recusal problem. It solves the problem raised by this Court in *Caperton* of the difficulties of inquiring into actual bias by the judge's private meditations on the matter. The

Statutes mandate a simple objective inquiry. (*Id.* at 2263).

But, the Alabama judicial officers were not having it. The success of big money in the 1994 Alabama Supreme Court elections taught them a lesson – ignore the Statutes. As of the 1994 Alabama Supreme Court election, no Republican had been elected to the Court in more than a century. That year the Republican candidate Court defeated the Democratic incumbent. In that election, the two candidates for chief justice raised millions where earlier elections raised thousands. The Democrat raised $832,775.00, and the Republican raised $746,181.00.

The Republican governor of Alabama, who was also elected in 1994, Fob James, saw after the 1994 election the writing on the wall as to the danger to the integrity of the courts of the big money judicial election strategy. He pushed the Statutes through the legislature in an effort to prevent judicial elections from becoming a matter of big money looking for favors. The Statutes were to apply to all elections held after January 1, 1996. They have never been applied.

In 1996, Republican Harold See challenged incumbent Democrat Kenneth Ingram and defeated him. See raised $2.68 million, of which $1.7 million came from business interests and $49,000.00 from lawyers. Ingram raised $1.76 million, $532,000.00 from lawyers and $4,600.00 from business interests. The big money has increased at every election since. Between 1994 and 2008, Alabama Supreme Court

candidates have raised and spent more than $60 million.

Even if the Statutes were not enforceable because of the lack of preclearance, it would be a clear violation of Canon 3C of the *Alabama Canons of Judicial Ethics* for Judge King or the justices of the Alabama Supreme Court to rule on the application of the Statutes because their "impartiality might reasonably be questioned."

ARGUMENT

I. Introduction

Alabama spends far more money than any other state to elect candidates to the Alabama Supreme Court. Between 1993 and 2006, candidates for the Alabama Supreme Court spent more than sixty million dollars. In 2006, the year Petitioner challenged the justices sitting on the mandamus, fifteen candidates in Alabama spent more than $13 million, one of whom was unopposed in the general election.

This trend began in 1994 when the Republicans began a campaign to swing the Alabama Supreme Court from Democrat to Republican. The key was big money spent in the campaigns, hitherto low interest and low recognition races. The strategy was so successful that the court went from a unanimous Democrat membership in 1993 to a unanimous Republican membership in 2004. There is today only one Democrat on the court out of nine justices.

Consider what has happened since the Statutes were adopted and ignored. The present Chief Justice of the Alabama Supreme Court, Sue Bell Cobb, is a Democrat elected in 2006. She defeated the sitting chief justice, Drayton Nabers, in a narrow election. The election cost $8.4 million, the second most expensive state judicial race in history. Republicans took control of the Alabama Supreme Court in 1998 by capturing three seats. The Republican candidates that year raised $4.8 million. The Democratic candidates raised $2.67 million. The nineteen judicial candidates who ran in the three elections in 1994, 1996, and 1998 raised $18,403,355.00. In 2000, the Republic candidates swept all five seats on the Alabama Supreme Court which were up for election. From 1993 through the 2008 elections, Alabama Supreme Court candidates raised more than $60 million, the largest amount in the nation. Texas was a distant second with $30 million. *Chicago Tribune*, January 30, 2009, "Candidates in Alabama Supreme Court Race Top $4 M," Phillip Rawls.

The statutes have never been enforced. The Republican strategy was to take control of the judicial posts in Alabama to the greatest extent possible. In 1994, the vast majority of Alabama judicial posts were held by Democrats. The Republicans realized that the only way that they would defeat the sitting Democrat judges was money. The Statutes were a threat to that money because the contributors could not have the judges they elected sit on their cases.

Therefore, the Republican attorney general after originally submitting the Statutes to the Justice Department for preclearance withdrew them and refused to resubmit them. The circumstances of a thirteen year "standoff" were created. The Alabama Supreme Court, without issuing an opinion saying so, hinted through concurrences by individual justices and *dicta* in footnotes that the Statutes would not be enforced until precleared. Its creature, the Administrative Office of Courts, announced it would not require judges to comply with them. The "game" was in place. The attorney general would not submit the Statutes for preclearance. The courts would not enforce them until precleared. The result – the Statutes have been put in limbo for thirteen years.

This Court in *Caperton* held that where judicial election contributions were of such size and given in such circumstances "that the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable," the outer limits of due process had been crossed. (*Caperton* at 2259). The facts in *Caperton* were that the principal of a corporation, which had a fifty million dollar judgment entered against in a West Virginia trial court, contributed between the time that the judgment was awarded and its reversal on appeal three million dollars to one of the three judges on the panel that reversed the judgment against the contributor's company. The Court found that the timing of the contribution, that is between the entry of the judgment and the decision on appeal, and its size breached the outer limits of constitutional tolerance and was a

violation of the due process rights of the party obtaining the judgment against the contributor. *Caperton* was a due process case based on facts and circumstances rather than judicial election regulating statutes or codes. In the instant case, Respondents' counsel gave more than the limits in the Statutes to Judge King while their motion to dismiss was pending.

But, *Caperton* further held that "States may choose to 'adopt recusal standards more rigorous than due process requires." (*Id.* at 2267). This Court referenced the Statutes in *Caperton* and explained as follows:

> Indeed, some States require recusal based on campaign contributions similar to those in this case. See, e.g., *Ala. Code* §§ 12-24-1, 12-24-2 (2006); Miss. Code of Judicial Conduct, Canon 3E(2) (2008).
>
> These codes of conduct serve to maintain the integrity of the judiciary and the rule of law. The Conference of the Chief Justices has underscored that the codes are "[t]he principal safeguard against judicial campaign abuses" that threaten to imperil "public confidence in the fairness and integrity of the nation's elected judges." Brief for Conference of Chief Justices as *Amicus Curiae* 4, 11. This is a vital state interest. (emphasis supplied).

This Court was clearly under the impression that the Statutes were being duly enforced. The "game" that has for thirteen years prevented enforcement of the Statutes is no doubt inconceivable to this Court. The attempts of the Alabama legislature to "maintain the integrity of the judiciary and the rule of law" have been frustrated by the thirst for political power. The courts and the attorney general have put the Statutes in limbo for thirteen years so that the huge campaign funds that have been raised could be raised. The judges who have sat on cases when the Statutes mandate their recusal have crossed the outer bounds of due process as surely as did the justice in *Caperton*.

II. The Judicial Canons

The trial judge and the appellate judges in this case are all disqualified under the clear language of the Statutes. But all of them have made the decision not to obey the Statutes. Such decision making is outside the *Canons of Judicial Ethics* adopted by Alabama. The Alabama Judicial Canons, as to which there is no preclearance issue, mandates recusal of those judges to decide whether to enforce them or not. The facts clearly meet the Alabama standard for recusal under Judicial Canon 3C.

Canon 3C(1), *Alabama Canons of Judicial Ethics*, provides, in pertinent part:

C. Disqualification.

> (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where.... (emphasis supplied).

In *Ex parte Duncan*, 638 So.2d 1332 (Ala.1994), this Court stated:

> Under Canon 3C(1), Alabama Canons of Judicial Ethics, recusal is required when "facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge." *Acromag-Viking v. Blalock*, 420 So.2d 60, 61 (Ala.1982). Specifically, the Canon 3C test is: "Would a person of ordinary prudence in the judge's position knowing all the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?" *Matter of Sheffield*, 465 So.2d 350, 356 (Ala.1984). The question is not whether the judge was impartial in fact, but whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality – whether there is an appearance of impropriety. *Id.*

> see *Ex parte Balogun*, 516 So.2d 606 (Ala.1987); see, also, *Hall v. Small Business Administration*, 695 F.2d 175 (5th Cir.1983).

(638 So.2d at 1334).

In *Ex parte Bryant*, 682 So.2d 39, 41 (Ala.Crim.App. 1996), the court explained the following as the applicable standard for 3C recusal:

> The standard for recusal [under 3C] is an objective one: whether a reasonable person knowing everything that the judge knows would have a "reasonable basis for questioning the judge's impartiality." The focus of our inquiry, therefore, is not whether a particular judge is or is not biased toward the petitioner; the focus is instead on whether a reasonable person would perceive potential bias or a lack of impartiality on the part of the judge in question. (internal citations omitted).

The Alabama judges have a direct financial interest, their jobs, in keeping the Statutes from being enforced. Of course they are subject to recusal on this ground under Canon 3C.

It is also a violation of due process for the circuit court or the Alabama Supreme Court to sit on this case because they are sitting as judge in their own case. See *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 822-825, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986). An

Alabama Supreme Court justice was held by this Court to have violated due process by sitting in a case in which it would be in his financial interest to find against one of the parties. In *Lavoie*, the Court held that where Justice Embry of the Alabama Supreme Court cast the deciding vote against an insurance company on a bad faith refusal to pay case while he had a personal case against an insurance company claiming bad faith failure to pay a claim. Justice Embry was barred by this Court from sitting on the *Lavoie* case because he would be serving as judge in his own case. *Lavoie* held that Justice Embry's conduct was a violation of due process.

The facts in the instant case show a more direct financial interest than *Lavoie*. Judge King and the Supreme Court justices must be disqualified because in deciding the Petitioner's claim that the statute is valid and enforceable, they would be the judges in their own cases in violation of the *Lavoie* case for four reasons: (a) these judges have not filed the financial contribution statements required by the Statutes so that if he ruled the statute valid and enforceable he would, under the provisions of the statute, forfeit his judicial pay since his first election; (b) if he ruled the statute invalid and unenforceable, as he has done, he would still be the judge in his own case because there would be no threat to his judicial pay, he could continue to sit on cases from his campaign contributors who give him large sums of money thus encouraging them to continue to make large contributions and enhancing his chances for reelection, and (c) he would not subject himself to the charge that he sat on cases

without requiring parties and counsel who contributed more than the specified amount to divulge that fact to opposing parties, a potentially serious political problem for Judge King; and (d) Judicial Canon 3C requires recusal when the ordinary person knowing all the facts would be able to reasonably conclude that there were reasonable grounds to believe Judge King might not be impartial. Therefore, Judge King must be disqualified whether or not § 12-24-2 may be enforced because under Canon 3C he cannot sit to decide whether it should be enforced.

Five places on the Alabama Supreme Court were up for election in November of 2006. Petitioner's motion to recuse the members of the court was filed March 7, 2006. The re-election efforts of five of the nine members of the court seeking re-election would be substantially hampered by a ruling favorable to Petitioner. In that year, fifteen Alabama Supreme Court candidates spend $13 million and one had no general election opposition.

Applying the rules announced by this Court in *Lavoie*, those five justices had a direct financial interest in keeping their jobs as they could only do by raising huge sums of money. An impartial observer would surely conclude that a justice facing such an election would have reason to be partial to allowing unlimited campaign fund raising to continue. In order to achieve that result, they had to decide against the Statutes and Petitioner.

III. Judge King Disregarded the Laws of Alabama Affirming the Statutes

The law of Alabama since 1996 has required that if a circuit judge received in the last election a total of $2,000.00 from the parties and their counsel before him in a case, then on motion of the opposing party the judge is "required" to recuse himself. *Ala. Code*, 1975, §§ 12-24-1 and 12-24-2. Judge King disregarded the appellate opinions so holding and relied instead on *dicta*.

In *Ex parte Bryant*, 675 So.2d 552, 555 (Ala.Crim.App. 1996), the court discussed these statutes:

> Does the fact that a defendant made a campaign contribution to a judge mandate the recusal of the judge from any proceedings involving the defendant? Sections 12-24-1 and 12-24-2, Code of Alabama 1975, address this issue. Section 12-24-1 states:
>
> ...
>
> > Section 12-24-2(c) states that recusal is necessary if a party in an action before a circuit judge made a campaign contribution to the judge in excess of $2,000. We interpret this section to mean that a campaign contribution to a circuit judge in excess of $2,000 will presumptively bias a circuit judge

> in the mind of the public. (emphasis supplied).
>
> The legislature retains the right to establish rules to govern the judiciary. See, *Ex parte Stewart*, 730 So. 2d 1246, 1250 (Ala. 1999).

It is undisputed that the defendants and their lawyers contributed more than $2,000.00 to Judge King's last campaign and *Bryant* and § 12-24-2 require recusal when that amount has been contributed. Judge King continued to sit on this case by blatantly ignoring the appellate court opinion he was required to obey. *Ex parte Turner*, 792 So.2d 1141, 1145 (Ala. 2000) (opinions of Alabama Court of Criminal Appeals have precedential value unless and until repudiated by the Supreme Court). *Grantham v. State*, 540 So.2d 779, 780-781 (Ala. 1988) (opinion of Alabama Court of Criminal Appeals construing Statutes have the force of precedent unless reversed by the Supreme Court).

IV. The Supreme Court of Alabama and the Statutes

The Alabama Supreme Court has refused in this case to enforce the Statutes just as they have for the last thirteen years based on a single justice's history of a dispute between the last three Alabama attorneys general and the Department of Justice.

The case of *Finley v. Patterson*, 705 So.2d 834 (Ala. 1997), concerned a motion for "disclosure and to

stay issuance of certificate of judgment" based on a claim that the court's earlier opinion in *Finley v. Patterson*, 705 So.2d 826 (Ala. 1997) should be set aside because of the adoption by the legislature of the Statute. (*Id.* at 835). The Statutes, however, were not applicable to elections prior to January 1, 1996 and so were not applicable to this case because there had been no election since that date. (*Id.* at 836). A majority of the justices did as they have always done when faced with enforcing the Statutes – ruled without opinion on a companion issue, citing *Finley*.

Justice Houston concurred in the result stating that "If the Act [the Statutes] is still in effect after next election, I will comply with it." (emphasis supplied) (*Id.* at 835).

Justice Cook concurred, but stated his opinion that the Statutes were in "legal limbo." (*Id.* at 835).

> FN1. I say the enforcement of this statute is in legal limbo for the following reasons: The attorney general of the State of Alabama submitted Act No. 95-648 to the Department of Justice of the United States for preclearance under Section 5 of the Voting Rights Act. Thereafter, the Department of Justice responded by letter dated July 23, 1996 to the attorney general stating that on May 20, 1996, the attorney general of Alabama withdrew Act No. 95-648 from submission, on the basis that no portions of the act were subject to the preclearance requirement. Disagreeing with

the attorney general of Alabama in the July 23, 1996 letter, the Department of Justice took the position that Act No. 95-648 required preclearance. Specifically, the United States Department of Justice's letter states: "We remind you that unless the State of Alabama receives a declaratory judgment from the United States District Court for the District of Columbia or the Attorney General imposes no objection to the voting changes in Act No. 95-648, they are not legally enforceable. See *Clark v. [Roemer],* 500 U.S. 646 [111 S.Ct. 2096, 114 L.Ed.2d 691] [(1991)]; 28 C.F.R. 51.10." The attorney general of Alabama responded to the Department of Justice by letter dated July 30, 1996, stating, inter alia, the following: "The State of Alabama will enforce Act No. 95-648, and the attorney general of Alabama will not submit this law for preclearance. Section 5 does not apply. If you disagree, we respectfully suggest that you proceed to enforce your interpretation of Section 5 in this context." Thereafter, the attorney general of Alabama by letter dated May 16, 1997, submitted to the Department of Justice Canon 7 of the Canons of Judicial Ethics for preclearance under Section 5 of the Voting Rights Act of 1965. The Department of Justice, by letter dated July 18, 1997, to the attorney general of Alabama, indicated that no objections were being interposed to Canon 7. Additionally, the Department of Justice's letter stated the following in regard to Act. No. 95-648:

This also refers to Act No. 648 (1995), which provides for disclosure statements regarding campaign contributions to justices and judges of the state appellate and circuit courts in the State of Alabama. Your office originally submitted this act to the Attorney General pursuant to Section 5 on March 14, 1996. We requested additional information regarding your submission on May 13, 1996, and on May 24, 1996, then Alabama Attorney General Jeff Sessions withdrew the submission from Section 5 review, asserting that Act No. 648 (1995) contained no changes affecting voting subject to Section 5. We responded on July 23, 1996, acknowledging the withdrawal of the submission, disagreeing with the Attorney General's reasoning, and requesting that Act No. 648 be resubmitted for Section 5 review. Copies of our correspondence are enclosed.

Our records fail to show that we have received a response from your office to our July 23, 1996, letter. We note that unless the State of Alabama receives a declaratory judgment from the United States District Court for the District of Columbia or the Attorney General interposes no

> objection to the specified changes, they are not legally enforceable. *Clark v. [Roemer],* 500 U.S. 646, 111 S.Ct. 2096, 114 L.Ed.2d 691 (1991); 28 C.F.R. 51.10.
>
> While we continue to adhere to the views expressed in our most recent letter, we now find further support for our position in Alabama Attorney General Opinion No. 97-00156 (Apr. 3, 1997), which determined that Canon 7 required Section 5 preclearance. We request that your office reconsider its previously expressed position in light of the 1997 [Alabama] Attorney General opinion.
>
> To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Alabama plans to take concerning this matter.
>
> I am unaware of any information indicating that these differences in opinion and position between the attorney general of Alabama and the United States Department of Justice have been resolved.

This statement by a single justice is the basis on which the Alabama Supreme Court has failed for thirteen years, and counting, to enforce the duly

adopted Statutes, thus frustrating the will of the people as expressed by their legislature and their governor while accepting huge sums of money from contributors who can appear before them to have their cases decided.

Justice Brown stated in *Brackin v. Trimmier Law Firm*, 897 So.2d 207, 234 (Ala. 2004), why she refused to recuse herself under the Statutes. *Brackin* was a case brought by a former credit union executive for defamation and negligence against the credit union and its law firm and auditor. The Supreme Court reversed a judgment on a jury verdict for the former executive against the credit union.

Brackin filed a motion to recuse Justice Brown because the Alabama Banker's Association contributed $56,500.00 to her campaign through a PAC, $9,000.00 of which was contributed while Brackin's case was under submission to the Alabama Supreme Court and only seven days before the *Brackin* opinion was released. (*Id.* at 230).

Justice Brown acknowledged that as of 2004, the Supreme Court had not resolved the enforceability of the Statutes. (*Id.* at 233-234).

The Alabama Supreme Court in *Ex parte McLeod*, 725 So.2d 271, 274 (Ala. 1998), stated in *dicta* as to the status of the Statutes at the time of the opinion in 1998:

> FN2. Although this legislation became effective on January 1, 1996, it is inapplicable to the present case. The contribution at issue in this present case was made for an upcoming election. The disclosure provisions of § 12-24-2 apply only to contributions made in the last election. We would also note that "preclearance" of this act by the United States Justice Department is still pending. See *Finley v. Patterson*, 705 So.2d 834, 835 (Ala. 1997).

In *Greene v. Jefferson County Commission*, 2008 WL 4892051 n.9 (Ala. 2008), the court made the following statement about the Statutes:

> FN9. In addition to the arguments addressed below, the Greene parties also argue that Judge Vance was required to recuse himself from this case pursuant to § 12-24-2(c), Ala.Code 1975. The Greene parties are precluded from seeking Judge Vance's recusal on this ground, however, because they raised this issue for the first time in their posttrial motion. (emphasis supplied).

These cases are the ones in which the Alabama Supreme Court or individual members thereof have addressed the enforceability of the Statutes. The law of Alabama is that the campaign contribution limits in the Statutes when exceeded presumptively bias a circuit or appellate judge because *Ex parte Bryant* has never been overruled. *Bryant* applied the Statutes.

There is no Alabama appellate court opinion overruling *Bryant* or holding that the Statutes are not enforceable. *Greene* holds that the claims based on the Statutes were filed too late so that any other comment about the Statutes is pure *dicta*.

CONCLUSION

The Alabama Attorney General refuses to submit the Statutes for preclearance and the Alabama courts refuse to enforce them until they are precleared. As a result of this "game," the judicial candidates can continue to get the "big bucks" campaign contributions and their contributors can continue to appear before them for "justice." This "game" is unconstitutional because it denies due process of law and equal access to the courts to the people of Alabama. The Federalist No. 10, at 47 (James Madison) (Clinton Rossiter ed. 1999) ("No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment and, not improbably, corrupt his integrity.")

Respectfully submitted,

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REL: 05/08/2009

STATE OF ALABAMA – JUDICIAL DEPARTMENT
THE SUPREME COURT
OCTOBER TERM, 2008-2009

1070987

William H. Whitehead v. Bradley, Arant, Rose & White, LLP; Robert Walthall; and John E. Goodman (Appeal from Jefferson County Circuit Court: CV-05-6143)

SHAW, Justice.*

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala.R.App.P.

Lyons, Woodall, Stuart, and Parker, JJ., concur.

Cobb, C.J., recuses herself.

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*This case was originally assigned to another Justice on this Court; it was reassigned to Justice Shaw on February 20, 2009

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

CV05-6143

William H. Whitehead,

Plaintiff,

-vs-

Bradley, Arant, Rose & White, L.L.P.; Robert Walthall; John E. Goodman; Haskell, Slaughter, Young & Rediker, L.L.C.; Patricia Diak; et al.,

Defendants.

ORDER

This matter comes before the Court on the motion to dismiss filed by defendants Bradley, Arant, Rose & White, LLP ("BARW"), Robert Walthall ("Walthall") and John E. Goodman ("Goodman"), collectively referred to herein as the "BARW defendants," who filed a Motion to Dismiss through counsel on November 9, 2005. A Supplemental Motion to Dismiss was filed on November 17, 2005.

Procedural History

Whitehead initially commenced this action with the filing of his original complaint in the Bessemer Division of the Circuit Court of Jefferson County on

July 14, 2005. Whitehead's claims against the BARW defendants were expressly brought under the Alabama Legal Services Liability Act ("ALSLA"), codified at *Ala. Code* § 6-5-570, *et seq.*

After the case was transferred to this Court on November 9, 2005, the BARW defendants filed a motion to dismiss against the rule of repose and statute of limitations defenses. Thereafter, in response, Whitehead first amended his complaint on November 14, 2005. The BARW defendants responded with a supplemental motion to dismiss filed on November 17, 2005.

Following extensive arguments relating to plaintiff's Motion to Recuse the undersigned judge, the Court denied the motion to recuse by written order of February 2, 2006, and set the motion to dismiss for oral argument on March 3, 2006. However, the Court's consideration of the motion to dismiss was postponed to permit various proceedings relating to Whitehead's request that this Court recuse itself. A hearing on the motion to dismiss was held on March 3, 2006, and BARW defendants supplemented their argument by letter brief on March 9, 2006. On March 10, 2006, Whitehead filed a motion to strike the letter brief, or alternatively, a response thereto. This Court again delayed any ruling pending further proceedings on recusal. A Petition for a Writ of Mandamus was filed with the Supreme Court of Alabama and was denied on April 19, 2006, followed by a denial on May 18, 2006 of plaintiff's request for rehearing. On August 1, 2006, plaintiff filed a Motion for Stay Pending Decision of

Federal Court which this Court GRANTED on August 30, 2006.

On February 6, 2007, a three-judge panel dismissed the appeal. Immediately subsequent to the panel's ruling, this Court lifted the stay and set a status conference for February 14, 2007. Whitehead again amended his complaint on February 13, 2007.

On February 15, 2007, plaintiff filed a Motion for Stay Pending Decision of Federal Court which was GRANTED by this Court on February 16, 207. Plaintiff having appealed to the United States Supreme Court on June 22, 2007, the stay remained in effect until this Court was notified on December 7, 2007, that plaintiff's petition had been denied, at which time a status conference was set for December 18, 2007.

For the sake of continuity of the record, this Court's ORDER filed on February 2, 2006 and the ORDER of February 16, 2007, are attached hereto and incorporated herein by reference.

During the status conference of December 18, 2007, the Court advised all Counsel that it was not prepared to rule on the Motion to Dismiss that had been argued on March 3, 2006 and that the Court would entertain the filing of proposed orders until January 11, 2008 at 5:00 p.m.

On January 11, 2008, plaintiff filed Plaintiff's Motion that Defendant Bradley, Arant, Rose & White,

LLP's Motion to Dismiss Be Treated As a Summary Judgment Motion and Memorandum of Plaintiff in Opposition o Bradley, Arant, Rose & White, LLP's Motion to Dismiss.

On January 15, 2008, defendant filed Response to Plaintiff's Motion that Defendant Bradley, Arant, Rose & White, LLP's Motion to Dismiss Be Treated as a Summary Judgment Motion. Late in the day on January 15, 2008, the court received Plaintiff's Reply to Defendant Bradley, Arant, Rose & White, LLP's Response to Plaintiff's Motion that Motion to Dismiss Be Treated as a Summary Judgment Motion.

This Motion to Dismiss was heard in open court on March 6, 2006. But for the series of appeals through the Alabama and Federal Court systems, and this Court's repeated orders of stay over the stringent objections of counsel for "BARW," "Walthall," and "Goodman" this Court would have ruled long ago on the Motion to Dismiss.

The Court does not recall any issue pertaining to the Motion to Dismiss being treated as a Motion for Summary Judgment until plaintiff's filing on January 11, 2008, with the exception of the letter to the Court from plaintiff's counsel dated June 19, 2007, filed in the Circuit Clerk's Office on June 25, 2007, which reads as follows:

Dear Judge King:

I have the June 18, 2007, letter Bruce Rogers wrote you asking you to lift the stay in this case and to rule on his client's motion to dismiss because the three judge panel has dismissed the case against the Alabama Administrative Office of Courts that seeks to enforce *Ala. Code*, §§ 12-24-1 and 2. My clients are in the process of appealing this decision. I respectfully request that you take no action until the result of that appeal.

However, should you chose instead to rule on the Bradley Arant Rose & White motion to dismiss my client, I respectfully request you deny it [*sic*]. The wrongful conduct of Bradley Arant Rose & White, under the allegations of the complaint, extended well into the allowable statute of limitations period and were a continuing violation [*sic*]. There is no merit to Bruce's argument to the contrary because, among the other reasons cited earlier by my clients, you must accept the allegations of the complaint as true. If the court considers the motion to be one for summary judgment, then my clients seek time for discovery as allowed by Rule 56.

In either event, Bruce's motion should be denied [*sic*].

Faithfully,
William Eugene Rutledge

In support of the motion to dismiss, defendants requested that, in addition to considering the pleadings in this case, this Court should take "judicial notice" of the two prior complaints filed by plaintiff in his underlying dispute, namely the June 4, 2003, verified complaint in *Whitehead v. Town & Country Ford, et al.*, in the Circuit Court of Jefferson County, Alabama, Bessemer Division, Civil Action No. CV-03-769; and the October 30, 2003, Complaint in *Whitehead v. Auto Associates, LLC and Steven D. Watts, et al.*,in the Circuit Court of Jefferson County, Bessemer Division, Civil Action No. CV03-1505.

In ruling on the BARW defendant's motion to dismiss, Alabama law expressly permits and encourages this Court to take judicial notice of these two prior complaints:

> The law in Alabama is settled in that when a party refers, in its pleadings, to another proceeding in the same court, that court may and should take judicial notice of the entire prior proceeding insofar as it is relevant to the question of law presented.

Slepian v. Slepian, 355 So.2d 714, 716 (Ala. Civ. App. 1977); *see also Lesley v. City of Montgomery*, 485 So.2d 1088, 1093 (ala. 1986)(". . . the court on motion to dismiss may take judicial notice of the entire proceeding").

The Court considered the defendants' motion to be a motion to dismiss from March 3, 2006 until January

11, 2008, when the unequivocal contention was first raised by plaintiff's counsel that the motion to dismiss had been converted to a motion for summary judgment. The Court deems the Rule 56(f) affidavit of William Eugene Rutledge to be both untimely and insufficiently specific to alter the Court's considered judgment.

The Court having reviewed the entire file, to include the January 11, 2008, memorandum of plaintiff's counsel, the January 15, 2008, response of defendant's counsel, the January 15, 2008, reply of plaintiff's counsel and the Alabama Rules of Civil Procedure, has determined that the filing of November 9, 2005, supplemented on November 17, 2005, constitutes a valid motion to dismiss.

Accordingly, the January 11, 2008, motion by plaintiff that the motion to dismiss be treated as a motion for summary judgment is hereby OVERRULED. The motion to dismiss seeks dismissal of all claims asserted against the BARW defendants by plaintiff William H. Whitehead ("Whitehead") as time-barred by the four-year period of repose and the two-year statute of limitations set forth in *Ala. Code* § 6-5-574(a). Afer reviewing Whitehead's complaint, the two amendments thereto, relevant statutory and case law, and hearing oral argument, the Court GRANTS the BARW defendants' motion to dismiss.

Standard of Review

When considering a motion to dismiss, the court must view the facts in the light most favorable to the plaintiff. *Johnson v. Coregis Ins. Co.*, 888 So. 2d 1231, 1233 (Ala. 2004) (citations omitted).'"[T]he standard for granting a motion to dismiss based upon the expiration of the statute of limitations is whether the existence of the affirmative defense appears *clearly* on the fact of the pleading.'" *Jones v. Alfa Mut. Ins. Co.*, 875 So. 2d 1189, 1193 (Ala. 2003) (citations omitted) (emphasis in original). Additionally, the Court make take judicial notice of other related proceedings referenced in the plaintiff's complaint, which the Court does here to verify certain key dates involved. *Slepian v. Slepian*, 355 So. 2d 714, 716 (Ala. 1977); *see also Lesley v. City of Montgomery*, 485 So. 2d 1088, 1093 (Ala. 1986).

Factual Background

Whitehead initially retained BARW and Walthall in1998 to provide legal representation with Whitehead's planned investment in and employment by a new automobile dealership, Town & County Ford ("Town & Country"). Second Amended Complaint, ¶ 12. Whitehead acknowledges in his complaints that this representation began in 1998, and then resumed in 2002. Second Amended Complaint ¶ 12.

According to his complaint, by July of 2002, Whitehead was notified that he was being terminated as an employee at Town & Country, a buy-out was demanded, and he became involved in a dispute with the other owners of the dealership concerning his

rights pursuant to the 1998 contracts negotiated by BARW. Second Amended Complaint ¶ 14. Whitehead alleges that Walthall and BARW had negligently or fraudulently allowed him in 1998 to enter into unfavorable agreements, thereby violating a duty to him as set forth in the ALSLA. Second Amended Complaint, ¶¶ 12, 13. Whitehead specifically alleges that, on October 17, 2002, Walthall wrote him a letter advising him as to the best course of action for handling the dispute, and that the advice provided in this letter "was erroneous and below the standard of care required by the ALSLA." Second Amended Complaint ¶ 14. In 2002, Goodman also became involved in representing Whitehead for the dispute. Second Amended Complaint ¶ 15. In particular, Whitehead claims that the BARW defendants advised him to take certain positions in the resulting dispute that were not reasonable in light of his limited rights under the 1998 contracts. Second Amended Complaint ¶¶ 18, 21.

After the dispute arose, Town & Country challenged BARW's representation of Whitehead based on BARW's prior representation of Town & Country in another matter. At that point, BARW withdrew from representing Whitehead. Second Amended Complaint ¶ 16. Whitehead acknowledges that he then retained to represent him the co-defendants Patricia Diak ("Diak") and Haskell, Slaughter, Young & Rediker, L.L.C. ("Haskell Slaughter"). Second Amended Complaint ¶¶ 10, 12, 14, 17. Diak is Goodman's wife, and Whitehead includes allegations that the BARW defendants continued to be involved in his

representation within the two year period before filing this complaint by Goodman giving advise through his wife Diak ("two lawyers for the price of one"). Second Amended Complaint ¶ 17.

Immediately after BARW's withdrawal, in June 2003, Diak and Haskell Slaughter commenced litigation for Whitehead against Town & Country, related individuals and entities by filing a Verified Complain in the Circuit Court of Jefferson County, Alabama, Bessemer Division, bearing civil action number CV03-769. The Verified Complaint, sworn to by Whitehead, said as follows:

> A dispute has arisen between plaintiff Whitehead and defendants Watts, Town & Country and Auto Associates because of Watt's decision to terminate Whitehead's employment from Town & Country and to force him to sell his ownership interest in Auto Associates.

June 4, 2003, Verified Complaint, ¶ 9. Due to their prior withdrawal, BARW did not appear as counsel for Whitehead in the June 4, 2003 Verified Complaint.

In another related lawsuit filed by Haskell Slaughter, in which Whitehead sought dissolution of his company, Whitehead avers that the date of his termination at Town & Country was February 27, 2003, and the formal exercise of a right to buy-out was February 28, 2003. *See Whitehead v. Auto Associates, LLC and Steven D. Watts, et al.* in the Circuit Court of

Jefferson County, Bessemer Division, Civil Action No. CV-03-1505, Complaint at ¶¶ 21-22.

Whitehead also alleges that the BARW defendants either knew or should have known that the documents prepared by Walthall in 1998 fell below the standard of care set forth in the ALSLA and that the BARW defendants conducted themselves throughout their representation of Whitehead so as to conceal Walthall's negligence and/or legal malpractice. Second Amended Complaint ¶¶ 18, 21. He claims that Walthall and BARW initially failed to negotiate the agreement between Whitehead and Town & County so as to adequately protect Whitehead, and then provided additional legal services falling before the applicable standard of care in connection with the resulting dispute. Second Amended Complaint ¶¶ 21, 25.

Whitehead did not file this legal malpractice action against BARW until July 14, 2005, more than two years after Whitehead retained Haskell Slaughter as his counsel, and more than six years after BARW's initial engagement to represent Whitehead in connection with Town & Country.

Legal Authority

Ala.Code § 6-5-574(a) sets forth the relevant time limitations for bringing actions under the ALSLA:

> All legal service liability actions against a legal service provider must be commenced within two years after the act or omission or

> failure giving rise to the claim, and not afterwards; provided, that if the cause of action is not discovered and could not reasonably have been discovered within such period, then the action may be commenced within six months from the date of such discovery or the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier; provided, further, that in no event may the action be commenced more than four years after such act or omission or failure....

Ala.Code § 6-5-574(a). To determine when the limitations period commenced to run, the Alabama Supreme Court has discussed the meaning of the "act or omission" language set forth in this statute. More recent interpretations of the statute do not require that injury or damage exist for the limitations period to commence, and instead hold that the act or omission itself is the commencement trigger. *See, e.g., Ex parte Panell*, 756 So.2d 862, 867-68 (Ala. 1999) (holding that a legal malpractice action accrues upon the occurrence of the act or omission giving rise to the claim, as opposed to the time the client first suffers damage); *Price v. Ragland*, 966 So.2d 246, 259 n. 18 (Ala. 2007) (acknowledging that the "act or omission" principle applies to actions brought post-*Panell*); *see also Dennis v. Northcutt*, 887 So.2d 219, 221 (Ala. 2004); *Wesson v. McCleave, Roberts, Shields & Green, P.C.*, 810 So.2d 652, 658 (Ala. 2001); *Ex parte Seabol*, 782 So.2d 212, 214 (Ala. 2000); *Sirote & Permutt, P.C. v. Bennett*, 776 So.2d 40, 45 n.5 (Ala. 2000) (acknowledging that the

occurrence principle applies to actions brought post-*Panell*).

This Court acknowledges that this split of authority exists concerning when the statute of limitations for a legal malpractice action begins to run. Although more recent cases mandate application of the "act or omission" principle, this Court also analyzed Whitehead's claims against the BARW defendants under the "injury" principle, which requires some injury or damage before the limitations period commences. Similar to the approach taken by the trial judge in *Denbo v. DeBray*, 968 So.2d 983 (Ala. 2006), this Court concludes that it is unnecessary to elect between the two approaches because the limitations period would pose a bar under either scenario. *Id.* at 989. For the following reasons, this Court concludes that the claims are time-barred.

I. Applying the "act or omission" principle.

In *Panell*, the Alabama Supreme Court reasoned that, when the Alabama Legislature enacted ALSLA, it modified the starting point for the limitations period "from the time the client first suffers actual damage ... to the time of "the act or omission or failure giving rise to the claim." *Id.* at 865. "Therefore, a legal-malpractice cause of action accrues, and the statute-of-limitations period begins to run, when 'the act or omission or failure giving rise to the claim' *occurs*, and not when the client first suffers actual damage." *Id.* at 868 (emphasis added), quoting *Ala. Code* § 6-5-574(a).

Whitehead alleges that his 1998 agreements did not adequately protect his interests, and the allegedly inadequate protections became manifest in late 2002 and early 2003, when Whitehead was terminated and the sale of his interest in the automobile dealership was demanded. Although Whitehead alleges that the BARW defendants continued to represent him after May, 2003, in connection with disputes implicating the 1998 agreements, all of Whitehead's claims arise out of the 1998 contracts, and the occurrence triggering commencement of the limitations period is the 1998 negotiation and execution of the agreements. Therefore, the four-year rule of repose set forth in *Ala.Code* § 6-5-574(a) bars Whitehead's claims based on that analysis.

Alabama law provides that later problems and injuries that compound the original problem "giving rise to the claim" (*Ala.Code* § 6050574), do not toll or revive the limitations period. Several decisions from the Alabama Supreme Court confirm that the original act or omission "giving rise to the claim" starts the running of the statute of limitations, thereby requiring that all related problems and injuries arising more than two years later are barred by the statute of limitations, and more than four years later by the rule of repose. For example, in *Panell*, the malpractice action involved an allegation that the attorney agreed to an unauthorized settlement on September 22, 1993, which was more than two years before the malpractice action was filed. However, while the attorney was still representing the client, and within two years of the malpractice claim being filed, the trial court's notation

of settlement on the case action summary sheet occurred on January 31, 1994, and the case was dismissed approximately seven months later on August 18, 1994. The legal malpractice action was filed on January 30, 1996, almost two years to the date after the trial court first noted the unauthorized settlement on the case action summary sheet. However, the legal malpractice claim had already accrued and the statute of limitations had already begun to run during the two years from the unauthorized settlement date of September 22, 1993. When the client's problem was compounded in 1994 with the court's notation of settlement and the subsequent dismissal of plaintiff's case, the statute of limitations period was neither tolled nor revived. In other words, the Alabama Supreme Court recognized that a statute of limitations is triggered and can run before the full extent of the problem or damage is sustained, even though the attorney's representation has not ended.

Michael v. Beasley, 583 So.2d 245 (Ala. 1991) represented the first interpretation of Alabama Code § 6-5-574. The defendant attorney in *Michael* was alleged to have negligently performed his duties while representing the plaintiffs in a personal injury lawsuit. At the personal injury trial, the jury returned a verdict against the plaintiffs on August 13, 1987. On appeal, the Alabama Supreme Court affirmed the jury's verdict on September 16, 1988. The plaintiffs alleged that they were not informed by the attorney of the adverse decision on appeal until March 22, 1989. The legal malpractice action was filed on February 26,

1990, within two years of the adverse decision on appeal. On motion to dismiss, it was held that the statute of limitations barred all of the legal malpractice claims because the claim related back to the time that a jury returned a verdict against the plaintiffs on August 13, 1987, and not when the verdict was affirmed on appeal nor when the lawyer later informed the client of the affirmance on appeal. Because the first act giving rise to the claim was the jury verdict, the legal malpractice claim was barred by the statute of limitations even though it was argued that within the limitations period the attorney had not obtained a reversal on appeal and had failed to timely advise them of the adverse decision from the appeals court.

In *Ladner v. Inge*, 603 So.2d 1012 (Ala. 1992) the defendant attorney had represented the plaintiff in real estate and business transactions occurring in 1979, 1983 and 1984. In the legal malpractice action filed in 1990, the attorney allegedly had failed to protect the plaintiff's interest in the original real estate and business transactions by failing to obtain a mortgage as security for repayment of promissory notes. The Alabama Supreme Court held that the legal malpractice cause of action accrued when the original transaction documents were first executed, and not when the adverse consequences of the original transaction agreements later arose as a result of a default.

In *Pearce v. Schrimsher*, 583 So.2d 253 (Ala. 1991), the Alabama Supreme Court affirmed the dismissal of

a legal malpractice action for the plaintiff's failure to file within the statute of limitations period. The malpractice claim involved an allegation that the defendant attorney had given them a defective title opinion for real property being purchased. When problems with the title arose several years later, the malpractice action was held to be time-barred.

Applying the interpretations of § 6-5-574 of the ALSLA in *Panell, Ladner, Michael,* and *Pearce,* Whitehead's legal malpractice claim accrued and the statute of limitations began to run in 1998 when Walthall first provided legal representation to Whitehead in connection with this investment in and employment by Town & Country. Even if the commencement of the limitations period could arguably be advanced to 2002, when Whitehead's contract dispute with Town & Country arose, more than two years elapsed from that time period before Whitehead filed his legal malpractice claims. Any adverse consequences later suffered by Whitehead during the two years that preceded the filing of his malpractice action (July 14, 2003 to July 14, 2005) are simply additional problems, injuries or damages that result directly from acts, omissions or failures "...giving rise to the claim" and occurring before July 14, 003. Additionally, Whitehead's "two for the price of one" allegations of receiving indirect legal advise after May 2003 from the BARW defendants via Diak do not toll or revive the running of the statute of limitations period. *Jackson v. BellSouth Telecommunications*, 372 F.3d 1250 (11th Cir. 2004) ("regardless of a putative client's subjective beliefs,

there can be no attorney-client relationship when the client does not consult with the attorney...."), *Landis v. Hunt*, 610 N.E.2d 554 (Ohio. App. 1992) (no attorney-client relationship between client and attorney with whom client's lawyer had consulted about client's case).

II. Applying the "injury" principle.

Because Whitehead had first suffered obvious and known injuries more than two years before filing his legal malpractice action on July 14, 2005, application of the pre-*Panell* "injury" principle also mandates dismissal of Whitehead's claims against the BARW defendants. The Alabama Supreme Court previously considered a legal malpractice claim as accruing when any legal injury is suffered, even if the claimant was unaware of any damage. *Sirote & Permutt, P.C., supra* at 45-46 (legal malpractice claim accrued when plaintiffs purchased certificates in reliance on legal opinion, not when legal opinions later determined to be incorrect thereby rendering certificates less valuable). Under the "injury" principle, Whitehead's claims are time-barred because he was terminated and his buy-out dispute arose in late 2002 and early 2003, providing sufficient injury to Whitehead to commence the limitations period more than two years before he filed his legal malpractice lawsuit.

Conclusion

After carefully considering Whitehead's complaint, as twice amended, and related judicial proceedings,

Whitehead has failed to sufficiently plead any set of facts under which his claims against the BARW defendants are not time-barred pursuant to *Ala. Code* § 6-5-574(a).

It is ORDERED AND ADJUDGED that the BARW defendants' Motion to Dismiss is GRANTED, and all claims against the BARW defendants are hereby DISMISSED. The Court expressly finds there is no reason for delay in making the dismissal of the "BARW" defendants final under Ala. R. Civ. P. 54(b).

DONE and ORDERED this the 6th day of February, 2008.

s/ Tom King, Jr.
Tom King, Jr.
CIRCUIT JUDGE

SUPREME COURT OF THE UNITED STATES

No. 07-375

AL RABIEE, ET AL.,

Appellants

v.

CALLIE T. DIETZ, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE ALABAMA ADMINISTRATIVE OFFICE OF COURTS

ON APPEAL from the United States District Court for the Northern District of Alabama.

THIS CAUSE having been submitted on the statement as to jurisdiction and the motion to affirm or dismiss.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the above court is affirmed.

November 26, 2007

IN THE SUPREME COURT OF ALABAMA
April 19, 2006

1050719

Ex parte William H. Whitehead. PETITION FOR WRIT OF MANDAMUS: CIVIL (In re: William H. Whitehead v. Bradley, Arant, Rose & White, L.L.P., et al.) (Jefferson County Circuit Court: CV-05-6143)

ORDER

The petition for a writ of mandamus to be directed to the Honorable Tom King, Judge of the Circuit Court of Jefferson County, Alabama, having been duly filed and submitted to the Court,

IT IS ORDERED that the petition for a writ of mandamus is denied.

Lyons, Woodall, Smith, Bolin, and Parker, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 19th day of April, 2006.

s/Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

IN THE SUPREME COURT OF ALABAMA
April 19, 2006

1050719

Ex parte William H. Whitehead. PETITION FOR WRIT OF MANDAMUS: CIVIL (In re: William H. Whitehead v. Bradley, Arant, Rose & White, L.L.P., et al.) (Jefferson County Circuit Court: CV-05-6143)

ORDER

The motion for the recusal of this Court and the appointment of a special court to consider the petition for a writ of mandamus directing the Honorable Tom King, Judge of the Circuit Court of Jefferson County, Alabama, to recuse himself from hearing the underlying case, having been duly filed and submitted to the Court,

IT IS ORDERED that the motion for recusal and appointment of special court is denied.

Nabers, C.J., and See, Lyons, Harwood, Woodall, Stuart, Smith, Bolin, and Parker, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 19th day of April, 2006.

s/*Robert G. Esdale, Sr.*
Clerk, Supreme Court of Alabama

IN THE SUPREME COURT OF ALABAMA
CASE NO. [1050719]

Ex Parte William H. Whitehead,

(William H. Whitehead vs. Bradley, Arant, Rose & White, L.L.P.; Robert Walthall; John E. Goodman; Haskell, Slaughter, Young & Rediker, L.L.C.; Patricia Diak; et al., Circuit Court of Jefferson County, Alabama, Case No. CV05-6143)

MOTION TO RECUSE CHIEF JUSTICE AND ASSOCIATE JUSTICES AND FOR APPOINTMENT OF SPECIAL COURT

Comes now Petitioner, William H. Whitehead, and moves the recusal in this case of the Chief Justice and Associate Justices of the Alabama Supreme Court, separately and severally, pursuant to Canon 3.C., Alabama Canons of Judicial Ethics, *Ala. Code*, 1975, §§ 12-24-1 and 2, and the Due Process Clause of the United States Constitution.

Whitehead seeks in this case to recuse Judge Tom King because of campaign contributions and influence he received from the defendants and their counsel. Judge King has ruled, in essence, that because Alabama judges must seek election, campaign contributions and influence can never be a basis for recusal. This ruling is contrary to the law of Alabama and the Due Process Clause. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994) ("Would a person of

ordinary prudence in the judge's position knowing all the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?"); *In the Matters of Murchison and White*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955) ("Every procedure which would offer a possible temptation to the average man as a judge *** not to hold the balance nice, clear, and true between the [parties] denies *** due process of law.' *Tumey v. State of Ohio*, 273 U.S. 510, 532, 47 S.Ct. 437, 444, 71 L.Ed. 749.")

Whitehead's mandamus petition seeks from this Court a ruling, among others, that under the legislative determination made by the Alabama Legislature and confirmed by the Alabama Governor in *Ala. Code*, 1975, §§ 12-24-1 and 2, campaign contributions from a party and its counsel combined in an amount of $2,000.00 requires recusal of a circuit judge and in the amount of $4,000.00 requires recusal of an appellate court judge.

> The Legislature intends by this chapter to require the recusal of a justice or judge from hearing a case in which there may be an appearance of impropriety because as a candidate the justice or judge received a substantial contribution from a party to the case, including attorneys for the party... (emphasis supplied). § 12-24-1.

Apparently, §§ 12-24-1 and 2 have not been precleared by the United States Justice Department

under the Voting Rights Act. *Finley v. Patterson*, 705 So.2d 834, 835 (Ala. 1997) (Cook, J., concurring). But, whether such post-passage clearance has been obtained or not, the legislation expresses the will of the Legislature. The legislature's opinion is certainly due deference since it is well established that the legislature retains the right to establish rules to govern the judiciary. See, *Ex parte Stewart*, 730 So. 2d 1246, 1250 (Ala. 1999).

The records of the Fair Campaign Practices Act in the Alabama Secretary of State's Office show that every member of this Court, except Justice Parker, received campaign contributions in an amount in excess of $4,000.00 from the defendants and their counsel in this case.[1] Justice Parker received only $3,500.00. These records are attached hereto and are marked by the name of each member of this Court. The records show the following amounts received by members of this Court from the defendants and lawyers representing them: Chief Justice Nabors - $8,500.00; Justice See - $25,000.00; Justice Lyons - $10,750.00; Justice Harwood - $15,000.00; – Justice Smith - $9,250.00; Justice Stuart - $9,000.00; Justice Bolin - $18,000.00; Justice Woodall - $17,369.00; and Justice Parker - $3,500.00. Therefore, under the limits

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[1]Bradley, Arant, Rose & White operates two PACs, RedMountainPAC and BARWPAC, through which large contributions were channeled to the members of this Court.

set by the Legislature, eight of the members of this Court must recuse themselves.[2]

The ruling sought by Whitehead in this petition that the members of this Court must recuse themselves on demand if they received more than $4,000.00 from parties and counsel appearing before them would be contrary to the existing election practices of the members of this Court. In 1994, the Democratic and Republican candidates for four seats on the Court spent more than $6.5 million seeking election. In 1996, two candidates for one seat spent $4.5 million; in 1996 two candidates for one seat spent $4.5 million; in 1998, seven candidates for three seats spent over $7 million; and in 2000, thirteen candidates for five seats raised over $13 million. Alabama ranks No. 1 in the United States in judicial campaign fund raising and in view of the fact that since 1993 candidates in statewise judicial elections have received $40 million in contributions, including $7.4 million for 11 candidates in the last election in 2004. Moreover, the decision sought in this petition would change the judicial election methods since entities are not likely to give such large sums if the members of this Court cannot sit on cases in which the donors are interested.

Five places on this Court are up for election in November of 2006, and the re-election efforts of the members of this Court seeking re-election would be

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[2]Even though Justice Parker has not received $4,000.00 from defendants and their counsel, he is subject to recusal on Due Process grounds.

substantially hampered by a ruling favorable to Whitehead because: (1) a ruling limiting the amount parties and lawyers may contribute to a judicial candidate without requiring recusal of that candidate as a judge in cases involving the contributors would severely limit campaign fund raising; and (2) the ruling sought by this petition is that where there is a recusal motion based on election circumstances, the Due Process Clause requires evaluation of all circumstances in the election of the judge, including evaluating monetary contributions and electoral influence contributed by entities seeking implementation through Court decisions of certain viewpoints or legal ideology, to determine if, given those circumstances, the ordinary person might believe there are grounds to question the impartiality of the judge or whether an ordinary person as judge might be tempted to favor such contributors and supporters.

For example, one study reports a strong correlation between campaign contribution and judicial decisions in arbitration law cases before the Alabama Supreme Court. Based on an examination of decisions from 1995 to 1999 the author of the study concluded that justices whose campaigns are funded by plaintiffs' lawyers tend to oppose arbitration while justices whose campaigns are funded by business favor arbitration. "Money Politics and Judicial Decision: A Case Study of Arbitration Law in Alabama," Steven J. Ware, 25 *Journal of Law and Politics* 645, 2001. Law journals and, to an ever increasing extent, the popular media are making public such correlations. See, e.g., "The Road Back from 'Tort Hell' The Alabama

Supreme Court, 1994-2004," Michael DeBow (Federalist Society for Law and Public Policy) www.fed.soc.org "Costly high court races denounced," Eric Velasco, *The Birmingham News*, February 265, 2006; "Buying Justice," Robert Miller, *Forbes*, July 21, 2003, "Money, Politics and Judicial Decisions: A Case Study of Arbitration Law in Alabama," Stephen J. Ware, 25 *Journal of Law and Politics* 645, 2001 (showing a strong correlation between justices whose campaigns were funded by plaintiff s lawyers opposing arbitration while those justices whose campaigns are funded by business favor arbitration.)

Of course, the standard is not whether there is actual bias, but whether reasonable members of the public would think there were grounds for questioning impartiality. In this connection, Justice O'Connor concurring in *Republican Party of Minnesota v. White*, 536 U.S. 765, 790 1222 S.Ct. 2528, 2543 153 L.Ed.2d 694 (2002) makes the following observation about the public's perception of campaign contributions' effect on judicial decisions:

> Even if judges were able to refrain from favoring donors, the mere possibility that judges' decisions may be motivated by the desire to repay campaign contributors is likely to undermine the public's confidence in the judiciary. See Greenberg Quinlan Rosner Research, Inc., and American Viewpoint, National Public Opinion Survey Frequency Questionnaire 4 (2001) (available at http://www.justiceatstake.org/files/JAS

NationalSurveyResults.pdf)(describing survey results indicating that 76 percent of registered voters believe that campaign contributions influence judicial decisions); id., at 7 (describing survey results indicating that two-thirds of registered voters believe individuals and groups who give money to judicial candidates often receive favorable treatment); Barnhizer, "On the Make": Campaign Funding and the Corrupting of the American Judiciary, 50 Cath. U. L.Rev. 361, 379 (2001) (relating anecdotes of lawyers who felt that their contributions to judicial campaigns affected their chance of success in court).

No analysis of these issues would be complete without a review of *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986). That decision invalidated a ruling of this Court in which Justice Embry voted in a 5 to 4 majority to reverse a lower court decision involving a case in which he had a personal interest in the resolution of a dispositive issue. The Alabama Supreme Court's ruling was issued while the justice was pursuing a separate lawsuit in an Alabama lower court, and its outcome "had the clear and immediate effect of enhancing both the legal status and settlement value of that separate suit." Id., at 824, 106 S.Ct. 1580. The court held Justice Embry had an interest in the outcome of the decision that disqualified him to participate in the decision. 475 U.S., at 824, 106 S.Ct. 1580. It mattered not whether the justice was actually influenced by this interest because "[t]he Due Process Clause, may sometimes bar

trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." Id., at 825, 106 S.Ct. 1580 (internal quotation marks omitted).

Conclusion

A guarantee to the parties in criminal and civil litigation of a totally fair and impartial tribunal, and the protection of the integrity and dignity of the judicial process from any hint of appearance of bias "is the palladium of our judicial system." *Mayberry v. Pennsylvania*, 400 U.S. 455, 91 S.Ct. 499 27 L.Ed.2d 532 (1971). *Stallworth v. City of Evergreen*, 680 So.2d 229, 233-234 (Ala. 1996). *Evans v. City of Huntsville* 580 So.2d 1323, 1325 (Ala. 1991).

WHEREFORE, THE PREMISES CONSIDERED, Whitehead prays that the Chief Justice and Associate Justices will recuse themselves and will appoint a special Supreme Court to hear and decide this petition.

Respectfully submitted,

s/ *William Eugene Rutledge*
William Eugene Rutledge
The AmSouth Bank Building
One Independence Plaza
Suite 725
Birmingham, Alabama 35209
(205)871-7071

Certificate of Service

I do hereby certify that I have served a copy of the foregoing on counsel listed bel w by placing a copy of same in the U. S. Mail, postage prepaid and property addressed this the 7th day of March, 2006:

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s/ William Eugene Rutledge
William Eugene Rutledge

Certificate of Counsel

I do hereby certify that the foregoing document has been typed in Courier New 13 type.

s/ *William Eugene Rutledge*
William Eugene Rutledge

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

CV05-6143

William H. Whitehead,

Plaintiff,

-vs-

Bradley, Arant, Rose & White, L.L.P.; Robert Walthall; John E. Goodman; Haskell, Slaughter, Young & Rediker, L.L.C.; Patricia Diak; et al.,

Defendants.

ORDER

This matter comes before the Court on plaintiff's Motion to Recuse the undersigned judge. The Court after reviewing all pleadings filed by the parties, *Alabama Canons of Judicial Ethics*, relevant statutory and case law, and hearing extensive oral argument, DENIES THE PLAINTIFF'S Motion to Recuse.

PROCEDURAL BACKGROUND

This matter was filed on July 14, 2005 in the Bessemer Division of the Circuit Court of Jefferson County, Alabama. The case arises from alleged violations of the Alabama Legal Services Liability Act ("ALSLA") as set forth in *Ala.Code* § 6-5-570, et seq.

The complaint has been brought by the plaintiff William H. Whitehead against Bradley, Arant, Rose & White, L.L.P.; Robert Walthall; John E. Goodman; Haskell, Slaughter, Young & Rediker, L.L.C.; and Patricia Diak. The plaintiff is a resident of Shelby County and all defendants reside in the Birmingham Division of Jefferson County, Alabama. The Honorable Judge Dan King initially presided over the matter. Based upon motions filed by the defendants, Judge King transferred the case to the Birmingham Division of Jefferson County on September 6, 2005.

Following the transfer, this matter was randomly assigned to the undersigned judge on or about October 19, 2005. On November 9, 2005, the defendants, Patricia Diak and Haskell, Slaughter, Young & Rediker, L.L.C. filed their motion to compel discovery responses to interrogatories and request for production of documents previously served. On the same date, defendants Robert Walthall, John E. Goodman and Bradley, Arant, Rose & White, L.L.P. filed a motion to dismiss accompanied with their memorandum of law in support of motion to dismiss. Given the pending motions, this Court set the matter for a routine status conference. No objection was raised by the plaintiff to the setting of the hearing. Further, no notice was raised by the plaintiff of any concerns regarding the undersigned judge presiding over this matter.

On November 17, 2005, a hearing was held with all parties present by and through their attorneys of record. For the first time and in open court, the plaintiff filed his Motion to Recuse the undersigned

judge. Taking into account the recusal motion, no hearing was held on the other pending motions. Instead, this Court entered a Scheduling Order as it relates to plaintiff's Motion to Recuse and set the hearing on the recusal issue for December 19, 2005.

On November 23, 2005, plaintiff filed a Motion for Court to Provide Campaign Materials and Plaintiff's Supplement to Motion to Recuse. On December 12, 2005, defendants Patricia Diak and Haskell, Slaughter, Young & Rediker, L.L.C. timely filed their Objection to Motion to Recuse. On December 13, 2005, John E. Goodman, Robert Walthall, and Bradley, Arant, Rose & White, L.L.P. timely filed their opposition to the plaintiff's Motion to Recuse. On December 16, 2005, plaintiff timely filed a reply to defendants' responses.

The hearing on December 19, 2005 went forward on the plaintiff's Motion to Recuse. All parties were given the opportunity without limitation to present witnesses, documents, and any other evidence to support their position. Further, the undersigned judge addressed plaintiff's motion requesting the court to provide campaign materials concerning endorsements for the 2002 judicial election campaign. (Exhibit 1, Transcript of Motion to Recuse Hearing, pp. 22-26, 29-32). As set forth in the attached transcript of the hearing, the undersigned judge advised the parties that the documentation sought by the plaintiff was one of many documents contained in several unorganized and unidentified boxes which are maintained at the Storage Depot. (Exhibit 1, p. 23). The boxes include

general campaign documents, legal files from the undersigned's prior private practice, Bar Association Committee files, personal files and military files. (*See id.*). As explained to the parties, the only document potentially responsive to plaintiff's request was a campaign advertisement that was published in *The Birmingham News*. (Exhibit 1, pp. 24-26, 29-32). The Court observed that this advertisement is a matter of public record and could be obtained by any party without the necessity of the Court conducting a search of the storage facility. Following this explanation, plaintiff's counsel expressed satisfaction with the Court's suggestion that the plaintiff contact *The Birmingham News* so as to acquire the document. The plaintiff was allowed additional time to obtain a copy of *The Birmingham News* advertisement and filed the same with the Court on December 30, 2005. Defendants timely filed a reply to plaintiff's motion by way of letters to the Court. No further requests for additional information or time was made by any party.

After reviewing the motions and briefs, hearing oral argument, taking into account the *Alabama Canons of Judicial Ethics*, Alabama statutes and reviewing the relevant case law, this Court hereby DENIES plaintiff's Motion to Recuse. THIS COURT FURTHER FINDS AS FOLLOWS:

LEGAL AUTHORITY

This Court has reviewed the applicable *Alabama Canons of Judicial Ethics*, and all legal opinions cited by the parties in this matter. This Court has also

considered what effect, if any, to give *Ala.Code* §§ 12-24-1 and 12-24-2. The Alabama Supreme Court has continuously held that recusal is not required by the mere accusation of bias unsupported by substantial evidence. *Ex parte Potts*, 814 So.2d 836 (Ala. 2001). Moreover, there is a presumption a judge is fair and impartial. *McMurphy v. State*, 455 So.2d 924 (Ala. Crim. App. 1984). The law will not suppose a possibility of bias or favor in a judge who is already sworn to administer impartial justice and whose authority greatly depends upon that presumption and idea. *Ex parte Balogum*, 516 So.2d 606 (Ala. 1987). The party seeking the recusal has the burden of proving the grounds for recusal. *Ex parte City of Dothan Personnel Board*, 831 So.2d 1 (Ala. 2002). In ruling upon said motion, judges must not recuse themselves for imaginary reasons; judge shopping should not be encouraged. *Glassroth v. Moore*, 229 F.SUPP. 1283 (M.D. Ala. 2002). In moving for recusal, the plaintiff essentially asserts the following three grounds for recusal: (1) the contributions to the undersigned's judicial campaign as given by the parties and counsel for the parties exceed the maximum allowed by *Ala.Code* § 12-24-1 and § 12-24-2; (2) the public endorsement in *The Birmingham News* of the undersigned judge by attorneys of record Frank Bainbridge and Stancil Starnes requires recusal; and (3) the undersigned's acquaintanceship with the defendants as well as counsel for the defendants requires recusal. The plaintiff has not offered sufficient factual or legal

authority to warrant recusal upon these grounds or any other argument.[1]

1. Campaign Contributions.

Plaintiff bases recusal primarily on *Ala.Code* § 12-24-1 and § 12-24-2, even though the Alabama Supreme Court has never provided the required rules contemplated by these statutes. *See e.g., Ala.Code* § 12-24-2(b) (1975). These statutes refer to a detailed

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[1]Plaintiff has not asserted with particularity, any claim under *Canon* 3(C) of the *Alabama Canon of Judicial Ethics*. Given however, this Court's view of the seriousness of the plaintiff's motion and the broad application of the *Alabama Canons of Judicial Ethics*, the Court affirmatively observes on its own that none of the elements of 3(c) or any other section would justify recusal. First, the presiding judge does not have a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the ongoing proceedings. Second, the presiding judge has not served as a lawyer in the matter in controversy or a lawyer with whom he previously practiced law or served during such association as a lawyer in a matter, or the judge or such lawyer has been a material witness concerning it. Third, neither the presiding judge nor his spouse minor [sic] child residing in his household has a financial interest in the subject matter in controversy or in a party in a proceeding, or any other interest that could be substantially effected [sic] by the outcome of the proceeding. Fourth, neither the presiding judge, his spouse, or person within the fourth degree relationship to the presiding judge is a named party to the proceeding, or an officer, director, or a trustee of a party. Fifth, neither the presiding judge, his spouse, or a person within the fourth degree relationship to either of them, or the spouse of such a person is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding. Lastly, neither the presiding judge, nor his spouse, nor persons within the fourth degree relationship to either of them nor the spouse of such a person to the presiding judge's knowledge are likely to be a material witness in the proceeding.

process relating to a trial judge's disclosure of campaign contributions and 14 day right to seek recusal. In support of plaintiff's argument, Mr. Whitehead relies heavily on *Ex parte Bryant*, 675 So.2d 552 (Ala. Cr. App. 1996). This case, however, is not controlling based upon more recent decisions by the Alabama Supreme Court. In *Ex parte Bryant*, 682 So.2d 39 (Ala. 1996), the Alabama Supreme Court reversed the Alabama Criminal Court of Appeals and granted the plaintiff's motion to recuse. Notably, the Alabama Supreme Court did not address nor rely on the issue of campaign contributions as described in *Ala.Code* §§ 12-24-1 and 12-24-2 by requiring that a circuit court judge outside of the judicial circuit at issue be appointed to hear the case. The Alabama Supreme Court's decision in *Bryant, supra*, was based on the "peculiar nature of the case." *Id.* at 41. The case at bar is an ordinary case and easily distinguishable from *Ex parte Bryant*.

The facts of the case at bar, as it concerns the motion to recuse, are common and occur daily throughout the state. Attorneys and parties routinely appear before judges for whom a campaign contribution has been made. Such a contribution is insufficient to require recusal. Moreover and as set forth in the December 19, 2005 transcript of oral argument concerning plaintiff's Motion to Recuse, no recusal or disqualification argument was ever raised by the plaintiff as concerns Judge Dan King although a similar argument could be made. (Exhibit 1, pp. 13-14, 21-22). Yet, the plaintiff now seeks recusal of the undersigned judge as well as all judges within the

Birmingham Division of Jefferson County who reside in the same county, Jefferson, as Judge Dan King, but a different division.

Following the *Bryant* decision, the Alabama Supreme Court in *Ex parte Kenneth D. McLeod Partnership*, 725 So.2d (Ala. 1998), specifically addressed both *Ala.Code* § 12-24-1 and § 12-24-2. The Alabama Supreme Court observed that while the Alabama Legislature has attempted to address campaign contributions in § 12-24-1 and § 12-24-2, the Act had not been pre-cleared by the United States Justice Department as required. *See id.* at 274.

The validity of *Ala.Code* § 12-24-1 and § 12-24-2 was called into further question in *Finley v. W. T. Patterson, et al.*, 705 So.2d 834 (Ala. 1997). In *Finley, supra,* the campaign contribution issue came before the Alabama Supreme Court on motions for disclosure and to stay issuance of a certificate of judgment. *Id.* at 834. The motions were denied. Justice Cook in his concurring opinion explained the enforceability of *Ala.Code* § 12-24-2 was in legal limbo. *Id.* at 835. Justice Cook found the required pre-clearance under Section V of the Voting Rights Act by the United States Department of Justice had yet to be performed. *Finley, supra,* at 835.

The Alabama Supreme Court in a more recent decision, *Brackin v. Trimmier Law Firm*, 897 So.2d 207 (Ala. 2004), again refused to embrace *Ala.Code* § 12-24-1 and § 12-24-2 as valid and enforceable. In *Brackin, supra,* a motion to recuse Justice Brown was

filed contemporaneously with an application for rehearing. The motion to recuse stated that while Justice Brown was running for re-election for a seat on the Alabama Supreme Court, the Alabama Bankers Association contributed $45,000.00 to her campaign. The recusal motion also asserted that an additional $9,000.00 was contributed to Justice Brown's campaign by the same entity a few days before the original opinion was issued. The plaintiff's argument was not persuasive. The Alabama Supreme Court declared *Ala.Code* § 12-24-1 and § 12-24-2 had not yet obtained pre-clearance from the United States Justice Department under the Voting Rights Act of 1965 and their unenforceability has been documented by the Alabama Supreme Court. *Brackin, supra,* at 233. In denying the motion to recuse, Justice Brown stated that "I am not aware of any opinions in which this Court has resolved the issue of the enforceability of § 12-24-1 and § 12-24-2 *Ala.Code* 1975...." *Id.* at 234. From the authority cited by the parties, the *Brackin, supra* opinion is the most recent Alabama opinion to address the statutes at issue. As such, the statutory provisions relied upon by the plaintiff are not controlling. This finding is supported by the plaintiff's own failure to cite any evidence to the contrary.

At the hearing on the motion to recuse, plaintiff conceded the question of the validity and enforceability of the statutes by stating:

> MR. RUTLEDGE: "I haven't been able to find out whether the Justice Department has given Voting Act clearance to 1224-2 yet or not. And

> I can't find out whether 12-24-1 has actually been submitted or needs to be submitted for Voting Act approval."

(Exhibit 1, p. 5).

Plaintiff goes on to state that:

> MR. RUTLEDGE: "I can't find out the status of that. I'd hoped to be able to bring in something from the Court, because it seems to me that 12-24-2 is a valid statute, that's the end of the matter in my favor."

(Exhibit 1, p. 6).

Plaintiff has failed to offer any evidence that *Ala.Code* § 12-24-1 and § 12-24-2 are valid and enforceable. The procedures and rules outlined in these statutes have never been implemented or followed. There has been no endorsement or confirmation of that statutes by the Alabama Supreme Court nor is there any indication that the statutes have been pre-cleared as required by the United States Justice Department. Therefore, *Ala.Code* § 12-24-1 and § 12-24-2 are not controlling and do not mandate recusal.

2. Endorsement of Judge by Attorneys and Parties to Action.

Plaintiff cites no statute, case law nor *Alabama Canon of Judicial Ethics* in support of recusal or disqualification of the presiding judge based on a past endorsement of a judicial official. In *Roe v. Mobile Co. Appointment Bd.*, 676 So.2d 1206, 1233 (Ala. 1995), the Alabama Supreme Court adopted a Texas Court's rationale and reasoning that

> [u]nder our system, which requires that candidates for judicial office stand for election, it is necessary, unfortunately, that candidates for judicial office seek contributions for the purpose of deferring all or part of the expenses of what is, in reality, a political campaign ... it is not surprising that attorneys are the principle source of contributions in a judicial election.

Id. (*quoting Rocha v. Ahmad*, 662 S.W.2d 77, 78 (Tex. App. 1993)). Furthermore,

> ...if a judge cannot sit on a case in which a contributing lawyer is involved as counsel, judges who have been elected would have to recuse themselves in perhaps a majority of the cases filed in their courts. Perhaps the next step would be to require a judge to recuse himself in any case in which one of the lawyers had refused to contribute, or worse still, had contributed to that judge's opponent. *Id.* at

1233 (quoting *Rocha v. Ahmad*, 662 S.W.2d 77, 78 (Tex. App. 1983)).

The Alabama Supreme Court has determined that receipt of campaign contributions do not warrant automatic recusal. Similarly, as part of the judicial process, endorsements by others in the community, including but not limited to attorneys, are also sought in addition to campaign
contributions. The Alabama Supreme Court's logical reasoning as set forth in *Roe v. Mobile Co. Appointment Bd.*, 676 So. 126 (Ala. 1995) demonstrates that when a state, such as Alabama, has elected judicial officials certain actions associated with campaigns, such as contributions and endorsement, are a recognized and accepted by-product. They do not, however, require recusal. The plaintiff has submitted a common judicial election campaign ad that ran in *The Birmingham News* by the undersigned in support of recusal. This campaign ad simply states that various lawyers and certain non-lawyers endorsed the undersigned judge's campaign for re-election. (Exhibit 1, pp. 22-26, 29-32). This in and of itself does not require recusal.

3. A Judge Being an Acquaintance of Counsel and/or Parties to an Action.

Plaintiff has provided no authority that establishes that a mere acquaintanceship with either counsel and/or a party requires recusal. The undersigned has been in private practice for a number of years in Jefferson County, prior to being appointed and re-

elected to the bench has become familiar with many members of the Alabama State Bar. Having practiced in Jefferson County, it is logical that the undersigned has acquaintances with members of the Jefferson County Bar including all counsel in this action. There is no authority offered or known by the undersigned that requires recusal on the basis of acquaintanceship.

The plaintiff's argument has been considered and rejected by the Supreme Court of Alabama. The Court has held a mere acquaintanceship does not require a presiding judge to recuse him or herself. *General Motors Corp. v. Jernigan*, 883 So.2d 846 (Ala. 2003). As required of all judges, the undersigned takes his role as part of the judiciary extremely serious. So to assure an independent and honorable judiciary, the undersigned participates in establishing, maintaining, enforcing, and observing the highest standards of conduct so that integrity and dependence of the judiciary is preserved. As required by the *Alabama Canons of Judicial Ethics* and adhered to by the undersigned, I do not allow family, social, political, or other relationships to influence my judicial conduct or judgment. Likewise, a mere acquaintanceship does not influence the undersigned's judicial conduct or judgment. Therefore, recusal is not required.

SUMMARY

Plaintiff has failed to meet his burden to support recusal as set forth in *Gary v. Crouch*, 867 So.2d 310, 320 (Ala. 2003); *Ex parte Potts*, 814 So.2d 836, 839 (Ala. 2001); *Ex parte Balogun*, 516 So.2d 606, 609 (Ala.

1987). In the absence of circumstances affirmatively requiring recusal, the United States Supreme Court has declared that it is a judge's duty to decide all cases within his jurisdiction. *Peirson v. Ray*, 386 U.S. 547, 545 (1967); *Accord Plan v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218-19 (1995).

After a thorough review of the *Alabama Canons of Judicial Ethics*, the legal opinions cited by the parties, the statutory provisions relied on by the plaintiff and all submissions, it is ORDERED AND ADJUDGED that plaintiff's Motion to Recuse is DENIED. The Motion to Dismiss which was filed on November 9, 2005 will be heard on March 3, 2006 at 8:00 a.m.

DONE and ORDERED this the 1st day of February, 2006.

s/*Tom King, Jr.*
Tom King, Jr.
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

CV05-6143

William H. Whitehead,

Plaintiff,

-vs-

Bradley, Arant, Rose & White, L.L.P.; Robert Walthall; John E. Goodman; Haskell, Slaughter, Young & Rediker, L.L.C.; Patricia Diak; et al.,

Defendants.

SECOND SUPPLEMENTAL SUBMISSION IN SUPPORT OF RECUSAL MOTION

Comes now the plaintiff, William H. Whitehead, and files the attached campaign advertisement from the Birmingham News of November 3, 2002, in support of plaintiff's motion to recuse Judge King. The lead counsel for the defendant, Honorable Frank M. Bainbridge and Honorable W. Stancil Starnes, placed their names on this advertisement publicly stating, with the apparent agreement of Judge King, that Judge King was a "friend" of theirs.

Respectfully submitted,
s/ *William Eugene Rutledge*
William Eugene Rutledge

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Certificate of Service

I do hereby certify that I have served a copy of the foregoing via facsimile and U. S. Mail; postage prepaid and properly addressed this the 30th day of December, 2005, upon counsel listed below:

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s/ William Eugene Rutledge
William Eugene Rutledge

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

CV05-6143

William H. Whitehead,

Plaintiff,

-vs-

Bradley, Arant, Rose & White, L.L.P.; Robert Walthall; John E. Goodman; Haskell, Slaughter, Young & Rediker, L.L.C.; Patricia Diak; et al.,

Defendants.

PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO MOTION TO RECUSE

The provisions of *Ala. Code*, § 12-24-2 read as follows:

> 12-24-2. Filing by judges, justices, parties, and attorneys of disclosure statements concerning campaign contributions.
>
> (a) Any justice or judge of an appellate or circuit court of this state shall file, at least two weeks prior to the commencement of his or her term of office, with the Secretary of State, a statement disclosing the names and addresses

of campaign contributors and the amount of each contribution made to him or her in the election immediately preceding his or her new term in office. Contributions from political action committees may be accepted if the committee furnishes to the Secretary of State according to existing law a list of names and addresses of contributors and an amount properly attributable to each contributor. When a justice or judge does not file this annual statement, the Secretary of State shall notify the Administrative Office of Courts and that office shall withhold further compensation to the justice or judge pending compliance with this section.

(b) The Supreme Court shall provide under the appropriate rules of court, a rule or rules which provide as follows: In an appellate court proceeding the attorneys for all parties shall serve certificates of disclosure on all attorneys of record before such court within 28 days after the filing of the notice of appeal; or in a circuit court within 28 days after notice of the identity of the judge presiding on the case. Each certificate shall state the amount, if any, of campaign contributions by the respective individual donor or entity to any justice or judge of an appellate court where the case is pending, or if it is a trial court proceeding, the amount, if any, of campaign contributions by the respective individual donor or entity to the judge presiding over the case, made in the last

election by the party or real parties in interest, any holder of five percent (5%) or more of a corporate party's stock, any employees of the party acting under that party's direction, any insurance carrier for the party which is potentially liable for the party's exposure in the case, the attorney for the party, other lawyers in practice with the attorney, and any employees acting under the direction of the attorney or acting under the direction of those in practice with the attorney. The failure to file the certificates of disclosure within the time frames set out above shall not affect the validity of the filing but the court may impose sanctions provided for by Rule 37(b) (2) (C, D) of the Alabama Rules of Civil Procedure, for the failure of a party to comply with this section after being ordered to do so.

(c) The action shall be assigned to a justice or judge regardless of the information contained in the certificates of disclosure. If the action is assigned to a justice or judge of an appellate court who has received more than four thousand dollars ($4,000) based on the information set forth in any one certificate of disclosure, or to a circuit judge who has received more than two thousand dollars ($2,000) based on the information set out in any one certificate of disclosure, then, within 14 days after all parties have filed a certificate of disclosure, any party who has filed a certificate of disclosure setting out an amount

> including all amounts contributed by any person or entity designated in subsection (b), below the limit applicable to the justice or judge, or an amount above the applicable limit but less than that of any opposing party, shall file a written notice requiring recusal of the justice or judge or else such party shall be deemed to have waived such right to a recusal. Under no circumstances shall a justice or judge solicit a waiver of recusal or participate in the action in any way when the justice or judge knows that the contributions of a party or its attorney exceed the applicable limit and there has been no waiver of recusal.

In *Ex parte Bryant*, 675 So.2d 552, 555 (Ala.Cr.App. 1996), the court made the following ruling as to this statute:

> Does the fact that a defendant made a campaign contribution to a judge mandate the recusal of the judge from any proceedings involving the defendant? Sections 12-24-1 and 12-24-2, Code of Alabama 1975, address this issue. Section 12-24-1 states:
>
> > The Legislature intends by this chapter to require the recusal of a justice or judge from hearing a case in which there may be an appearance of impropriety because as a candidate the justice or judge received a substantial contribution from a party to the case, including attorneys for the

> party, and all others described in subsection (b) of Section 12-24-2. This legislation in no way intends to suggest that any sitting justice or judge of this state would be less than fair and impartial in any case. It merely intends for all the parties to a case and the public be made aware of campaign contributions made to a justice or judge by parties in a case and others described in subsection (b) of Section 12-24-2.
>
> Section 12-24-2(c) states that recusal is necessary if a party in an action before a circuit judge made a campaign contribution to the judge in excess of $2,000. We interpret this section to mean that a campaign contribution to a circuit judge in excess of $2,000 will presumptively bias a circuit judge in the mind of the public.

The foregoing shows the incorrectness of the assertion made by Haskell Slaughter in its brief that, "Alabama courts have never found campaign contributions to judicial candidates, standing alone, to be sufficient grounds for disqualification." (Haskell Slaughter Br. At 4). Even with the obvious equivocation, this is simply not true. Moreover, the legislature, with the approval of the governor, has made the following the public policy of Alabama:

12-24-1. Recusal of justice or judge due to campaign contributions.

The Legislature intends by this chapter to require the recusal of a justice or judge from hearing a case in which there may be an appearance of impropriety because as a candidate the justice or judge received a substantial contribution from a party to the case, including attorneys for the party, and all others described in subsection (b) of Section 12-24-2. This legislation in no way intends to suggest that any sitting justice or judge of this state would be less than fair and impartial in any case. It merely intends for all the parties to a case and the public be made aware of campaign contributions made to a justice or judge by parties in a case and others described in subsection (b) of Section 12-24-2." (emphasis supplied)

The devastating thing from this legislation for the defendants is that it makes frivolous all their arguments about the "absurdity" of plaintiff's position and the obvious, to them, lack of merit in seeking to recuse a judge because of campaign contributions from a party and its lawyers. The executive and legislative branches of Alabama government agree with plaintiff and reject their position.

Since it is undisputed in this case that the defendants and their lawyers contributed more than $2,000.00 to Judge King's last campaign, the foregoing

authorities seem to mandate recusal. However, the very fine lawyers representing the defendants say not true. They say § 12-24-2 has not been precleared by the United States Justice Department under the Voting Rights Act and is in legal limbo, citing *Finley v. Patterson*, 705 So.2d 834, 835 (Ala. 1997) (Cook, J., concurring). This is not an opinion of the court. In any event, there is no suggestion that the statute is invalid. The decision of the *Bryant* court to follow the statute is certainly binding on this Court.

The defendants also mistakenly rely on *Ex parte The Kenneth D. McLeod, Sr., Family Limited Partnership*, 725 So.2d 271 (Ala. 1998). In this case, the issue was whether "a new trial is required when a trial judge fails to disclose to a party before her court a campaign contribution made to her by the opposing party." (725 So.2d at 272). The court declined to place the burden of disclosing campaign contributions on the court. The court made the following statements regarding § 12-24-2:

> It is significant to note that the Alabama Legislature has refused to impose such a burden on the judiciary. In 1996, the Legislature attempted to deal with the question of judicial campaign contributions, by adopting S 12-24-1 and S 12-24-2. Through this legislation, the burden of disclosing a campaign contribution has been placed on the donor party – the party who can most easily carry this burden and carry it at the least cost. Section 12- 24-2(b), Ala.Code 1975. A judge,

> on the other hand, is required only to publicly file a statement of contributions with the secretary of state. Section 12-24-2(a), Ala.Code 1975. The burden imposed by the Court of Civil Appeals goes beyond even that imposed by the Alabama Legislature. (id. at 724).

In short, the executive and legislative branches of the Alabama government and the Alabama Court of Criminal Appeals have concurred that under circumstances such as those in this case, the Court should be recused. No amount of argument will change that fact. One can assume from the arguments advanced by defendants' counsel that if they were making public policy for the state, they would not have enacted § 12-24-2. But that power belongs to the legislature and the governor, not the defendants and not even this Court. Even the preclearance provisions of the Voting Rights Act do not change that fact. Is this Court prepared to thwart the will of the legislature and the governor? Surely not. The recusal motion should be granted.

Even more frivolous is the assertion that there is no meaningful difference in terms of political power, clout, influence and other campaign nasties between BARW and Haskell Slaughter as parties and ordinary lawyers. In a case also cited by defendants for an incorrect proposition of law, *Roe v. Mobile County Appointment Board*, 676 So.2d 1206, 1233 (Ala. 1995), the issue was whether the justices of the Alabama Supreme Court should recuse themselves because

some of them had made $500.00 contributions to judicial candidates interested in the outcome of the case. Even though the case does not support the defendants, it is of precedential value to this case. The court held as follows:

> ...The reasoning of the Texas courts is stated in *Rocha v. Ahmad*, 662 S.W.2d 77, 78 (Tex.App.1983):
>
> > Under our system, which requires that candidates for judicial office stand for election, it is necessary, unfortunately, that candidates for judicial office seek contributions for the purpose of defraying all or part of the expenses of what is, in reality, a political campaign. Such a candidate in a contested race must spend substantial amounts of money, particularly where, as is the case of one seeking election to the appellate bench, he is forced to campaign in 32 counties.
> >
> > It is not surprising that attorneys are the principal source of contributions in a judicial election. We judicially know that voter apathy is a continuing problem, especially in judicial races and particularly in contests for a seat on an appellate bench. A candidate for the bench who relies solely on contributions from

> nonlawyers must reconcile himself to staging a campaign on something less than a shoestring. If a judge cannot sit on a case in which a contributing lawyer is involved as counsel, judges who have been elected would have to recuse themselves in perhaps a majority of the cases filed in their courts. Perhaps the next step would be to require a judge to recuse himself in any case in which one of the lawyers had refused to contribute or, worse still, had contributed to that judge's opponent.
>
> The reasoning of the Texas court is applicable in Alabama as well. (emphasis supplied) (676 So.2d at 1232-1233).

Defendants have made a point about the failure of plaintiff to "prove" how powerful BARW and Haskell Slaughter are in the legal-judicial world and what influence they wield in judicial elections with their several hundred lawyers and employees, all of whom have disproportionate influence in judicial elections because of voter apathy and lack of the average voter's knowledge of the judicial candidates causing reliance on the recommendation of those who are supposed to know. For example, the Court, both as a judge and a judicial candidate, must judicially and personally know the incredible influence of the BARW and Haskell Slaughter votes in the polls as to the most qualified judicial candidates released to the public

shortly before judicial elections. The power of these parties in Jefferson County judicial elections is enormous and to deny it is to be less than candid.

The charges in this case are unhappy ones for all concerned because they include charges that certain lawyers at these great law firms have practiced law relative to the plaintiff below the standards of the Bar and have overcharged for that work. It is not an ordinary case. This case comes within the ruling in *Ex parte Bryant*, 682 So.2d 39, 42 (Ala. 1996) where because the defendant was a prominent Mobile County lawyer appointed to conservatorships by several Mobile County judges from which he was accused of wrongly taking money, the court held that all Mobile County judges should be recused. Given the nature of the charges and the nature of the defendants, "reasonable persons would have reason to question to question the impartiality of the judges of the [10th] Judicial Circuit..." (id.)

The motion for recusal should be granted and a judge from outside the Tenth Judicial Circuit appointed to hear the case.

Respectfully submitted,
s/ *William Eugene Rutledge*
William Eugene Rutledge

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Certificate of Service

I do hereby certify that I have served a copy of the foregoing via facsimile and U. S. Mail; postage prepaid and properly addressed this the 16th day of December, 2005, upon counsel listed below:

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s/*William Eugene Rutledge*
William Eugene Rutledge

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

CV05-6143

William H. Whitehead,

Plaintiff,

-vs-

Bradley, Arant, Rose & White, L.L.P.; Robert Walthall; John E. Goodman; Haskell, Slaughter, Young & Rediker, L.L.C.; Patricia Diak; et al.,

Defendants.

PLAINTIFF'S MOTION TO RECUSE JUDGE J. THOMAS KING

Comes now, plaintiff, William H. Whitehead, pursuant to moves to disqualify the Honorable J. Thomas King, Circuit Judge, Tenth Judicial Circuit of Alabama, pursuant to Alabama Canons of Judicial Ethics, Canon 3C.(1), from sitting as the judge on this case and, as grounds, says as follows:

1. Canon 3.C.(1), Alabama Canons of Judicial Ethics, provides, in pertinent part:

> C. Disqualification.
> (1) A judge should disqualify himself in a proceeding in which his disqualification is

> required by law or his impartiality might reasonably be questioned, including but not limited to instances where:
>
> > (a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding....

In *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala.1994), the Alabama Supreme Court explained:

> Under Canon 3(C)(1), Alabama Canons of Judicial Ethics, recusal is required when 'facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge.' *Acromag-Viking v. Blalock*, 420 So.2d 60, 61 (Ala.1982). Specifically, the Canon 3(C) test is: 'Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?' *Matter of Sheffield*, 465 So.2d 350, 356 (Ala.1984). The question is not whether the judge was impartial in fact, but whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality – whether there is an appearance of impropriety. Id.; see *Ex parte Balogun*, 516 So.2d 606 (Ala.1987); see, also, *Hall v. Small Business Administration*, 695 F.2d 175 (5th Cir.1983).

In *Ex parte Bryant*, 682 So.2d 39, 41 (Ala.1996), the court explained the following as the applicable standard for recusal:

> The standard for recusal is an objective one: whether a reasonable person knowing everything that the judge knows would have a 'reasonable basis for questioning the judge's impartiality.' *[Ex parte] Cotton*, 638 So.2d [870] at 872 [(Ala.1994)]. The focus of our inquiry, therefore, is not whether a particular judge is or is not biased toward the petitioner; the focus is instead on whether a reasonable person would perceive potential bias or a lack of impartiality on the part of the judge in question. In *In re Sheffield*, 465 So.2d 350, 357 (Ala.1984), this Court wrote:
>
> > [T]he reasonable person/ appearance of impropriety test, as now articulated in Canon 3(C)(1), in the words of the Supreme Court of the United States, may "sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). As stated in Canon 1 of the Code of Judicial Ethics, "An independent and honorable judiciary is indispensable to justice in our society," and this requires avoiding

> all appearance of impropriety, even to the point of resolving all reasonable doubt in favor of recusal.

2. In his election campaign of 2002, Judge King received from the defendants large campaign contributions in the form of money and signed public endorsement of the Judge King's 2002 election campaign. Alabama Fair Campaign Practices Act records show defendants made the following contributions:

> Haskell, Slaughter, Young & Rediker, LLC, $500.00 on July 16, 2001.
>
> Bradley, Arant, Rose & White, LLP, $1,000.00 on March 15, 2002.
>
> Bradley, Arant, Rose & White, LLP, $1,000.00 on May 22, 2002.
>
> Haskell, Slaughter, Young & Rediker, LLC, $500.00 on May 22, 2002.
>
> Bradley, Arant, Rose & White, LLP, $500.00 on February 25, 2003.

In addition, defendants gave and attended campaign events supporting the election of Judge King. The two law firms that are defendants, Bradley, Arant, Rose & White, LLP ("Bradley Arant") and Haskell, Slaughter, Young & Rediker, LLC ("Haskell Slaughter"), are among the largest law firms in the Tenth Judicial

Circuit, Haskell Slaughter comprising more than 50 lawyers and Bradley Arant more than 100 lawyers, making them enormously influential in any judicial election. There is no doubt the said defendants will be pivotal supporters or opponents in the Judge King's next campaign for election in 2008. These facts clearly meet the Alabama standard for recusal which is an objective one based on whether a reasonable person knowing everything that the judge knows would have a "reasonable basis for questioning the judge's impartiality."

3. Counsel for the defendants likewise made financial contributions and other campaign contributions to Judge King's 2002 election.:

Frank Bainbridge	6/22/01	$500.00
Bruce Rogers	6/22/01	$250.00
Bruce Rogers	6/22/01	$200.00
Starnes & Atchison	6/26/01	$1000.00

4. Neither plaintiff nor plaintiff's counsel made any contributions to Judge King's campaign and neither plaintiff or plaintiff's counsel are even residents of the tenth Judicial Circuit.

5. Judge King has personal relationships with many of the lawyers in the firms of Bradley Arant and Haskell Slaughter who will have a direct financial interest in the outcome of this case.

6. Plaintiff respectfully submits that the foregoing relationship between Judge King and the defendants

constitutes grounds for disqualification which are defined in Alabama Law as whether a person of ordinary prejudice who knows all of the facts known to the judge would conclude that there is a reasonable basis upon which to question the judges ability to be impartial

WHEREFORE, the premises considered, plaintiff prays that Judge King will recuse himself from further participation in this case, or, in the alternative, request the Chief Justice of the Alabama Supreme Court to assign a judge to hear the evidence and determine Judge King's disqualification from sitting on this case.

Respectfully submitted,

s/ *William Eugene Rutledge*
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Certificate of Service

I do hereby certify that I have served a copy of the foregoing via Hand delivery in open court this the 17th day of November, 2005, upon counsel listed below:

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s/ *William Eugene Rutledge*
William Eugene Rutledge

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

CV05-6143

William H. Whitehead,

Plaintiff,

-vs-

Bradley, Arant, Rose & White, L.L.P.; Robert Walthall; John E. Goodman; Haskell, Slaughter, Young & Rediker, L.L.C.; Patricia Diak; A, B, C, and D, who are those persons, firms, or other entities, who rendered legal services to plaintiff that violated the standard of care required by the Alabama Legal Services Liability Act, *Ala. Code*, §§ 6-5-570, et seq., whose names are otherwise unknown, but whose names will be added hereto by amendment when ascertained,

Defendants.

FIRST AMENDED COMPLAINT

Comes now the plaintiff and amends the complaint heretofore filed to read as follows:

I.
Jurisdiction

1. The jurisdiction of this action is based on the Alabama Legal Services Liability Act, *Ala. Code*, §§ 6-5-570, et seq., the only action authorized in Alabama against legal services providers.

Parties

2. William H. Whitehead ("Whitehead") is an adult resident of Shelby County, Alabama, who has been a plaintiff and a defendant in litigation filed in this Court and defended in this Court by the defendants, Haskell Slaughter and Diak, acting as Whitehead's legal counsel.

3. Bradley, Arant, Rose & White, L.L.P. ("Bradley Arant"), is an Alabama limited liability partnership engaged in the practice of law that does business by agent in the Bessemer Division of Jefferson County, Alabama.

4. Robert Walthall ("Walthall") is an attorney duly licensed in Alabama and a partner in Bradley Arant.

5. John E. Goodman ("Goodman") is an attorney duly licensed in Alabama and a partner in Bradley Arant.

6. Haskell, Slaughter, Young & Rediker, L.L.C. ("Haskell Slaughter"), is an Alabama limited liability company engaged in the practice of law that does

business by agent in the Bessemer Division of Jefferson County, Alabama.

7. Patricia Diak ("Diak") is a duly licensed attorney practicing law in Alabama, an employee and/or a shareholder in Haskell Slaughter, and the wife of Goodman.

8. A, B, C, and D are those persons, firms or other entities, who rendered legal services to plaintiff that violated the standard of care required by the Alabama Legal Services Liability Act ("ALSLA"), *Ala. Code*, §§ 6-5-570, et seq., whose names are otherwise unknown because Whitehead has not yet been able to obtain access to his files from Haskell Slaughter or Bradley Arant, but whose names will be added hereto by amendment when ascertained.

II.
Relevant Facts

9. Whitehead has paid Bradley Arant substantial fees for legal services in connection with the matters and things set forth below. Bradley Arant presently claims that Whitehead owes it an additional $17,872.00 for legal services rendered Whitehead by Bradley Arant during and since 2002-2003. The legal services provided to Whitehead by Bradley Arant, Walthall, and Goodman have been sub-standard and in violation of the standard of care imposed on Bradley Arant, Walthall, and Goodman by the Alabama Legal Services Liability Act, *Ala. Code*, §§ 6-5-570, et seq. ("ALSLA"). Whitehead contends that the amount he

has been charged is excessive for the work claimed to have been performed and further denies that he is presently indebted to Bradley Arant in any amount because the work performed by Bradley Arant was in violation of the standard of care required by the ALSLA and has resulted in substantial damages and losses to Whitehead. Nevertheless, Bradley Arant insists that its claim for these legal services is now due to be paid to it by Whitehead in the amount of $17,872.00. Whitehead prays that the Court will enter a judgment determining the amount of said fees and expenses that are excessive and were charges for sub-standard legal services under the standard of care imposed by the ALSLA relative to the representation for which Bradley Arant, Walthall, and Goodman were retained and further avers that Bradley Arant Walthall, and Goodman should be ordered by the Court to repay to him that portion of the said fees and expenses that the Court finds are excessive and represent charges for sub-standard representation in violation of the standard of care imposed by the ALSLA .

10. Whitehead has paid Haskell Slaughter approximately $200,000.00 for legal services and related expenses since July of 2002. Haskell Slaughter is now claiming that Whitehead owes it an additional $57,808.68 in attorney's fees and expenses and has threatened to file an attorney's fee lien in connection with such claim. The primary counsel representing Whitehead from Haskell Slaughter has been Diak. Whitehead terminated Haskell Slaughter and Diak as his attorneys in June of 2005. In view of the fact that

the litigation is ongoing in which Haskell Slaughter, Diak, Bradley Arant, and Goodman represented Whitehead and the need for Whitehead's new counsel to fully understand the litigation to date, Whitehead's new counsel has attempted since becoming Whitehead's counsel in the ongoing litigation to meet with a representative of Haskell Slaughter, Diak, Bradley Arant, Walthall, and Goodman to discuss the status of the litigation and the effect on the ongoing litigation of the nature and the sub-standard quality of the legal representation rendered to Whitehead by Haskell Slaughter, but these attempts have been rebuffed and any such meeting has been refused. Whitehead avers that such a refusal in view of the ongoing litigation and the necessity for Whitehead and his new counsel to make immediate decisions regarding the ongoing litigation is in violation of the standard of care imposed on the said defendants by the ALSLA. Even though they have refused any such meeting, Haskell Slaughter and Diak have insisted on payment of the said $57,808.68 in claimed attorney's fees and expenses and Bradley Arant, Walthall, and Goodman have insisted on payment of the said $17,872.00 in fees and expenses. This insistence on payment in full for representation that the said defendants refuse to discuss with new counsel in the ongoing litigation was in violation of the ALSLA and has proximately caused damage to Whitehead.

11. Whitehead denies that he owes any additional attorney's fees or expenses to Haskell Slaughter or Diak and prays that the Court will enter a judgment providing and adjudging that he does not owe any such

fees and expenses. Whitehead contends that the attorney's fees were excessive charges on the following grounds: (a) the charges were allegedly for legal services and expenses unnecessary to the representation and were not reasonably calculated to advance any of Whitehead's interests that Haskell Slaughter and Diak had been retained to represent; (b) the charges are fraudulent in that they are excessive for the work claimed to have been performed and because Whitehead was not informed by Haskell Slaughter and Diak that the services rendered were not reasonably necessary or calculated to benefit Whitehead; and (c) charging the said fees to Whitehead was not in accordance with the standard of care exercised by the ordinarily prudent lawyer in the same or similar situations as required by the ALSLA.

12. Whitehead claims that the $200,000.00 in attorney's fees and expenses he has already paid to Haskell Slaughter and Diak were not for legal services rendered that were reasonably calculated to advance any of Whitehead's legitimate interests that Haskell Slaughter and Diak had been retained to represent. Whitehead further avers that the charges are fraudulent in that they are excessive for the work claimed to be performed and because Whitehead was not informed by Haskell Slaughter and Diak that the services being rendered were not reasonably necessary or calculated to benefit Whitehead. Moreover, Whitehead avers that the conduct of Haskell Slaughter and Diak in charging the said $200,000.00 in fees and expenses to Whitehead was not in accordance with the standard of care exercised by the ordinarily prudent

lawyer in the same or similar situations. Whitehead prays that the Court will enter a judgment determining the amount of said fees and expenses that are excessive and unnecessary to the representation for which Haskell Slaughter and Diak were retained and further avers that Haskell Slaughter and Diak should be ordered by the Court to repay to him that portion of the said fees and expenses that the Court finds are excessive and unnecessary charges to the representation for which Haskell Slaughter and Diak were retained and which were made in violation of the standard of care imposed by the ALSLA .

13. Whitehead avers that in 1998 and again in 2002-2003 he was represented in connection with acquiring an interest in Auto Associates, L.L.C. ("Auto Associates") and related entities and accepting employment with Town & Country Ford, L.L.C. by Bradley Arant, Walthall, and Goodman. Whitehead avers that Bradley Arant and Walthall negligently represented him in violation of the standard of care imposed by the ALSLA in a number of respects, including, but not limited to, the following: (a) negotiating on behalf of and recommending to Whitehead a contract that allowed Steven Watts ("Watts") to initiate at his sole discretion demands, unlimited in number, to buy the membership interests of Whitehead in Auto Associates, require Whitehead to pay the expenses of valuation, but retain the right not to purchase if in his sole discretion he did not choose to do so after the evaluation was made, all without Walthall explaining to Whitehead the meaning and significance of the aforesaid provisions of the said

contract; and (b) failing to negotiate a definitive employment agreement between Whitehead and Town & Country Ford, L.L.C. ("Town & Country Ford") to protect Whitehead from discharge as an employee at will, while representing to Whitehead that he had negotiated a contract that would protect Whitehead's employment status; (c) negotiating with Watts as though the documents approved by Walthall in violation of the standard of care required by the ALSLA prohibited Watts from acting as he was acting and protected Whitehead from such actions when Bradley Arant, Walthall, and Goodman knew, or in the exercise of the standard of care required by the ALSLA would have known, that the documents authorized Watts to act as he was acting; (d) creating a situation that forced Watts to file an arbitration proceeding by advising Whitehead in violation of the standard of care required by the ALSLA that he was not required to choose the formula or the appraisal method of evaluating his interest in the Watts' controlled companies when the documents approved by Walthall did require him to do so; (e) filing a counterclaim in arbitration that was not justified by law and fact; (f) transferring the case to Goodman's wife for control purposes and to protect themselves from suit for the aforesaid wrongdoing doing; and (g) continuing to represent Whitehead in the period July of 2002 to June of 2005, including the arbitration hearing in November of 2003 after ostensibly substituting Goodman's wife as lead counsel without informing Whitehead that the position taken on his behalf by the defendants was not supported by law and fact; (h) by failing to engage in any discovery on behalf of Whitehead during the

period between the time Goodman filed the said counterclaim and the date of the arbitration hearing in November of 2003; (i) advising Whitehead in November of 2003 that he should accept the settlement being offered by Watts' and his counsel even though said settlement was not in Whitehead's best interest and in violation of the standard of care required by the ALSLA. Whitehead specifically avers that Bradley Arant, Walthall, and Goodman continued to act as his counsel in the above referenced matters and things and to commit violations of the standard of care required by the ALSLA on a continuous basis from at least July, 2002 until June, 2005, including the arbitration hearing on November 7, 2003, and that during that time the violations of the ALSLA were on a continuing and on-going basis.

14. In reliance on the false assurances of Bradley Arant and Walthall, Whitehead signed the contracts with Watts, made a large investment of more than $170,000.00 in Auto Associates, quit a lucrative job, thus losing a number of lucrative stock options, and entered into employment at Town & Country Ford to develop the fixed operations departments of that Ford dealership, 74% of the member interests of which are owned by Auto Associates.

15. In, to-wit, July of 2002, Watts, acting as the controlling person of Auto Associates and Town & Country Ford, demanded that Whitehead sell him the member interests in Auto Associates owned by Whitehead and terminated Whitehead's employment at Town & Country Ford. Whitehead contacted

Walthall and asked him to protect Whitehead's interests under the contracts that Walthall had represented him in negotiating and which Whitehead believed, based upon Walthall's assurances, protected his interests. Walthall on October 17, 2002, wrote Whitehead a letter in which he concealed the mistakes he had made and represented that the documents he had prepared and represented Whitehead in negotiating fully protected Whitehead's employment and ownership. Walthall represented the following to Whitehead: "Under Alabama law, the actions by the Watts Group represent clear acts of oppression of a minority business owner which will entitle you to damages and other relief against the watts Group." However, in truth and in fact, Bradley Arant and Walthall had so negligently represented Whitehead in the negotiation of the contracts, that Whitehead was contractually subject to the very actions being taken against Whitehead by Watts. Instead of facing up to their mistakes, Bradley Arant and Walthall attempted by means of misrepresenting to Whitehead his legal rights against Watts to conceal the truth from Whitehead. The advice provided to Whitehead by Walthall in the said October 17, 2002, letter, and supplemented by oral representations to the same effect, was erroneous and below the standard of care required by the ALSLA. Bradley Arant, Walthall, and Goodman knew that Whitehead was relying on and continuing to act on the said erroneous advice. Bradley Arant, Walthall, and Goodman knew that as late as November of 2003, Whitehead was relying on their legal advice because at that time Goodman supplemented this advice with further advice to accept

a settlement of the dispute with Watts because the terms were in Whitehead's best interest. Bradley Arant, Walthall, and Goodman never corrected or withdrew the erroneous advice, but instead directly or acting through Goodman's wife, Diak, continuously urged Whitehead to accept and act on said advice to and including the filing of a mandamus action by Haskell Slaughter on behalf of Whitehead in the Alabama Supreme Court on September 20, 2004.

16. Following the erroneous and sub-standard advice given Whitehead by Bradley Arant and Walthall, Goodman, through means presently unknown to Whitehead, became involved in Bradley Arant's representation of Whitehead in response to Watts' actions. Goodman informed Whitehead that the contract "was poorly written" from Whitehead's point of view, but continued to urge Whitehead to persist in following the advice in the October 17, 2002, letter. Whitehead authorized Goodman to write settlement proposal letters on his behalf to Watts and/or Watts' counsel to try to settle the controversy based on the assumption that the advice in the attached letter was correct. Bradley Arant, Walthall, and Goodman knew, or acting in compliance with the standard of care required by the ALSLA would have known, that continuing to act in a manner calculated to conceal Walthall's representation of Whitehead in violation of the ALSLA would result in harm, damages, and loss to Whitehead. Nevertheless, Bradley Arant, Walthall, and Goodman continued to so act. In fact, Bradley Arant, Walthall, and Goodman provoked Watts and Watts' counsel to file a proceeding in arbitration,

arbitration being required in the documents approved by Bradley Arant and Walthall on behalf of Whitehead, by their unjustified insistence that the documents approved by Bradley Arant and Walthall did not allow Watts to act in the manner in which he was acting toward Whitehead. This conduct was below the standard of care required by the ALSLA. Moreover, having acted in violation of the ALSLA to provoke the arbitration, Bradley Arant, Walthall, and Goodman filed on behalf of Whitehead a counterclaim that contained claims that were not supported by law or fact and which Bradley Arant, Walthall, and Goodman knew or, in the exercise of the standard of care required by the ALSLA, would have known were not supported by law or fact.

17. Town & Country Ford's counsel challenged Bradley Arant continuing to represent Whitehead because of an earlier representation by Bradley Arant of Town & Country Ford, a representation undertaken by Bradley Arant after it began representing Whitehead in this matter. Bradley Arant acquiesced in Watts' demand, though it did not need to do so since Town & Country Ford had waived the alleged conflict. Goodman informed counsel for Town & Country Ford that Bradley Arant would be withdrawing as Whitehead's counsel because of this challenge. In truth and in fact, however, Bradley Arant and Goodman did not file a motion to withdraw as counsel for Whitehead in the arbitration proceeding and continued to function as one of Whitehead's counsel in the matter until on or about June of 2005.

18. Goodman and Walthall at a meeting held at Bradley Arant's offices with Whitehead told Whitehead that the ideal attorney to represent him was Goodman's wife, Patricia Diak, an attorney at Haskell Slaughter. Goodman accompanied Whitehead to the offices of Haskell Slaughter to the initial meeting with Diak, carrying the Bradley Arant file with him, and discussed the "transition" to Haskell Slaughter and Diak. Based upon the recommendation of Walthall and Goodman, Whitehead retained Haskell Slaughter and Diak to represent him in connection with the Watts-Auto Associates-Town & Country Ford matter. Whitehead would not have retained Diak as his counsel except for these recommendations. Moreover, as a further inducement to Whitehead to retain Diak, both Goodman and Diak represented that Goodman would continue to be involved in the case because he would be discussing the case with and advising Diak through "pillow talk" and there was nothing Town & Country Ford's lawyers could do about it. Diak even sought to enhance her appeal as counsel for Whitehead by making the representation to Whitehead that because Goodman would remain involved in Whitehead's legal matters, Whitehead was getting "two lawyers for the price of one". As late as November of 2003, when Whitehead was considering whether or not to enter into a "settlement" with Watts at an arbitration hearing that Haskell Slaughter and Diak strongly recommended, Diak informed Whitehead that she had just consulted Goodman by phone and that Goodman told her to tell Whitehead that he should go ahead with the "settlement" because it was a "good deal". Diak had earlier been

unsuccessful in convincing Whitehead to accept the settlement proposed by Haskell Slaughter and Diak. Mrs. Whitehead was resisting the proposed settlement and Whitehead was uncertain about it. Diak and Goodman intended to use Goodman's influence as one of Whitehead's attorneys to influence him to accept the settlement. Whitehead was greatly influenced to accept the proposed settlement as a result of Goodman's recommendation. In order for Goodman to give such advice through Diak, he and Diak must have deemed Goodman to be acting as Whitehead's lawyer entitled to give Whitehead legal advice on a matter as to which Whitehead was uncertain and Goodman and Diak must have intended for Whitehead to be influenced by Goodman's advice. Moreover, immediately after the "settlement" was reached in November and December of 2003, Bradley Arant and Walthall again billed Whitehead for legal services.

19. The defendants, A, B, C, and D, Bradley Arant, Walthall, Goodman, Haskell Slaughter, and Diak all knew, or in the exercise of the standard of care required by the ALSLA would have known that as of July of 2002, the contracts negotiated by Bradley Arant and Walthall facially authorized Watts to take the actions against Whitehead that he began taking at that time and continued to take until the matter was settled by agreement in October of 2005. The defendants A, B, C, and D, Bradley Arant, Walthall, Goodman, Haskell Slaughter, and Diak knew, or in the exercise of the standard of care required by the ALSLA would have known, that in the absence of a successful effort to set aside or reform the contracts, Watts had

the right to terminate Whitehead's employment as an employee at will and to force Whitehead to undergo the Auto Associates limited liability company member interest sale demand procedure provided in the contract. Bradley Arant, Walthall, and Goodman knew, or in the exercise of the standard of care required by the ALSLA would have known, that Walthall had acted in violation of the standard of care imposed by the ALSLA in negotiating the said contracts and in misrepresenting to Whitehead that the contracts protected his interests. Nevertheless, these defendants continued to represent Whitehead as legal counsel in conjunction with Haskell Slaughter and Diak without telling him that challenging Watts' actions under the existing contracts was not supported in law or fact and was not in Whitehead's best interest and was not reasonably calculated to or reasonably expected by the defendants to be successful. Haskell Slaughter and Diak also knew, or in the exercise of the standard of care required by the ALSLA would have known, that Bradley Arant, Walthall, and Goodman were not disclosing to Whitehead, as it was their duty to do, the negligence and legal malpractice of Walthall or the legal and financial peril in which such negligence and malpractice had placed Whitehead and his family. Haskell Slaughter and Diak failed to disclose the negligence and fraudulent behavior of Bradley Arant, Walthall, and Goodman to Whitehead as it was their duty to do.

20. Haskell Slaughter and Diak had a conflict of interest in continuing to represent Whitehead in that Diak's husband was a partner at Bradley Arant who

faced economic and other losses if Diak acted to protect the interests of Whitehead against Bradley Arant, Walthall, and Goodman. Moreover, Diak personally faced economic loss if her husband sustained economic loss as a result of Diak enforcing Whitehead's rights against Bradley Arant, Walthall, and Goodman.

21. Therefore, after July of 2002 and continuing until June of 2005, Whitehead was represented by A, B, C, and D, Bradley Arant, Walthall, Goodman, Haskell Slaughter, and Diak, all of whom had a disqualifying conflict of interest and all of whom rendered legal services to Whitehead in violation of the standard of care imposed by the ALSLA. Haskell Slaughter and Diak had a duty to disclose to Whitehead the negligence and malpractice of Bradley Arant, Walthall, and Goodman, but failed to do so and as a consequence thereof, Whitehead was caused to sustain further damages and losses.

22. The defendants, A, B, C, and D, Bradley Arant, Walthall, Goodman, Haskell Slaughter, and Diak, separately and severally, violated the ALSLA in their representing Whitehead as his counsel and providing legal services to him. The said violations include, but are not limited to, the following. Even though the contracts are written so that Watts could at his sole discretion discharge Whitehead as an employee at will of Town & Country Ford and to exercise his right to begin the Auto Associates membership interest purchase process, the defendants, separately and severally, failed to disclose this to Whitehead as it was their duty to do. The legal advice given to Whitehead

by Diak and Haskell, Slaughter that they could successfully sue Watts on Whitehead's behalf for corporate oppression of a minority interest and "squeeze-out" was without foundation in law or fact. Bradley Arant and Walthall failed to negotiate an agreement to protect Whitehead's employment at Town & Country Ford from arbitrary termination as Whitehead directed Walthall to do and as Walthall told Whitehead he had done. The so-called "special agreement" touted by Walthall as protection for Whitehead's employment does not do so.

23. It was the duty of Haskell Slaughter and Diak to either tell Whitehead they did not believe his claims against Bradley Arant and Walthall and withdraw as Whitehead's attorneys, or to take legal action against Bradley Arant and Walthall on behalf of Whitehead, or tell Whitehead of his rights, but refuse to represent him. Haskell Slaughter and Diak did none of these things, but instead ignored the responsibility of Bradley Arant and Walthall to Whitehead contrary to the standard of care imposed by the ALSLA.

24. Instead, Haskell Slaughter and Diak convinced Whitehead to follow a course of litigation that had no reasonable chance of success, but which brought great profit to Haskell Slaughter and Diak and great cost, expense, and loss to Whitehead. For example, Haskell Slaughter and Diak convinced Whitehead to pay them to litigate the manner and method of appraising Whitehead's interests in Auto Associates, even though no matter what method of appraisal was used to value Whitehead's stock once Watts had exercised his

contractual right to begin the process to buy it, Watts did not have to buy if, in his sole discretion, Watts did not like the price. Moreover, Watts was not required to repay Whitehead for the costs of the appraisal whether Watts elected to buy or not. Diak, whatever her motive, made litigation certain when she advised Whitehead that following Watts demand that started the purchase process he should make no election as to the method to be used, formula or appraisal, in valuing his interests in Auto Associates, even though he was obligated to do so under the contract. Upon the failure of Whitehead to make an election based on this advice, Watts initiated the arbitration process.

25. Whitehead has lost for the last two years the opportunity cost of selling his interest in Auto Associates, plus the $200,000.00 he has paid to Haskell Slaughter and Diak for attorney's fees and expenses in this litigation, all to advocate a legal position asserted by Haskell Slaughter and Diak, with the consent and advice of Bradley Arant and Goodman, that had no reasonable chance to benefit Whitehead.

26. The defendants, Bradley Arant, Goodman, Haskell Slaughter, and Diak, all recommended on the day the matter was set for trial before the arbitration panel, in the strongest possible terms, that Whitehead enter into a "settlement" rather than proceeding to trial before the arbitration panel. The "settlement" was not in Whitehead's interest, as the defendants, Haskell Slaughter and Diak, now admit. The legal services provided to Whitehead by the defendants, Bradley Arant, Goodman, Haskell Slaughter, and Diak, at the arbitration panel hearing, in the preparation therefor,

in the settlement, and in the representation since the "settlement" were in violation of the standard of care imposed by the ALSLA.

III.
Causes of Action
Count One

24.(sic) Whitehead adopts the allegations of paragraphs 1 through 24 as a part of this Count One.

25.(sic) The defendants, Bradley Arant, Walthall, Goodman, Haskell Slaughter, Diak, A, B, C, and D, separately and severally, negligently represented Whitehead with regard to the aforesaid matters in that the defendants, Bradley Arant, Walthall, Goodman, Haskell Slaughter, Diak, A, B, C, and D, in the said representation failed to exercise such reasonable care and skill and diligence as other similarly situated legal service providers in the same general line or practice in the same general area ordinarily have and exercise in a like case and, as a proximate result thereof, Whitehead has been injured and damaged in the amount of Two Million Dollars ($2,000,000.00). Wherefore, Whitehead claims of the defendants, Bradley Arant, Walthall, Goodman, Haskell Slaughter, Diak, A, B, C, and D, damages in the amount of Two Million Dollars ($2,000,000.00) plus such other, further, and different relief as they may in the premises be entitled.

Count Two

26.(sic) Whitehead adopts the allegations of paragraphs 1 through 25 as a part of this Count Two.

27. Whitehead prays that pursuant to the Alabama Legal Services Liability Act, *Ala. Code*, §§ 6-5-570, et seq., this Court will enter a judgment against Bradley Arant providing and adjudging that Whitehead is not obligated to pay any further attorney's fees or expenses to Bradley Arant and that Whitehead is entitled to recover from Bradley Arant all attorneys fees paid to it with regard to the legal services and related expenses referred to herein. Whitehead further prays that this Court will order and award equitable and legal relief to him as he shall in the premises be entitled to receive.

Count Three

28. Whitehead adopts the allegations of paragraphs 1 through 27 as a part of this Count Three.

29.Whitehead prays that pursuant to the Alabama Legal Services Liability Act, *Ala. Code*, §§ 6-5-570, et seq., this Court will enter a judgment against Haskell Slaughter providing and adjudging that Whitehead is not obligated to pay any further attorney's fees or expenses to Haskell Slaughter and that Whitehead is entitled to recover from Bradley Arant all attorneys fees paid to it with regard to the legal services and related expenses referred to herein. Whitehead further prays that this Court will order and award

equitable and legal relief to him as he shall in the premises be entitled to receive.

Respectfully submitted,

s/ *William Eugene Rutledge*
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JURY DEMAND

Plaintiff demands trial by struck jury of all issues triable by jury.

s/ *William Eugene Rutledge*
William Eugene Rutledge

CERTIFICATE OF SERVICE

I certify that I have served the foregoing pleading on the following counsel of record this 14th day of November, 2005, by facsimile transmission and U. S. Mail, postage prepaid and properly addressed:

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s/ William Eugene Rutledge
William Eugene Rutledge

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 20. Elective Franchise
Subchapter I-A. Enforcement of Voting Rights

§ 1973b. Suspension of the use of tests or devices in determining eligibility to vote

(a) Action by State or political subdivision for declaratory judgment of no denial or abridgement; three-judge district court; appeal to Supreme Court; retention of jurisdiction by three-judge court

(1) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been

made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines that during the ten years preceding the filing of the action, and during the pendency of such action--

(A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section;

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of

the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

(C) no Federal examiners or observers under subchapters I-A to I-C of this chapter have been assigned to such State or political subdivision;

(D) such State or political subdivision and all governmental units within its territory have complied with section 1973c of this title, including compliance with the requirement that no change covered by section 1973c of this title has been enforced without preclearance under section 1973c of this title, and have repealed all changes covered by section 1973c of this title to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 1973c of this title, with respect to any submission by or on behalf of

the plaintiff or any governmental unit within its territory under section 1973c of this title, and no such submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory--

(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;

(ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under subchapters I-A to I-C of this chapter; and

(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. Any aggrieved party may as of right intervene at any stage in such action.

(5) An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment and shall reopen the action upon motion of the Attorney General or any aggrieved person alleging that conduct has occurred which, had that conduct occurred during the

ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection. The court, upon such reopening, shall vacate the declaratory judgment issued under this section if, after the issuance of such declaratory judgment, a final judgment against the State or subdivision with respect to which such declaratory judgment was issued, or against any governmental unit within that State or subdivision, determines that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision which sought a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision, or if, after the issuance of such declaratory judgment, a consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.

(6) If, after two years from the date of the filing of a declaratory judgment under this subsection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are

unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of Title 28.

(7) The Congress shall reconsider the provisions of this section at the end of the fifteen-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006.

(8) The provisions of this section shall expire at the end of the twenty-five-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006.

(9) Nothing in this section shall prohibit the Attorney General from consenting to an entry of judgment if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of subsection (a)(1) of this section. Any aggrieved party may as of right intervene at any stage in such action.

(b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register

The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or

that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973f or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) "Test or device" defined

The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) Required frequency, continuation and probable recurrence of incidents of denial or abridgement to constitute forbidden use of tests or devices

For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local

action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e) Completion of requisite grade level of education in American-flag schools in which the predominant classroom language was other than English

(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in

which the predominant classroom language was other than English.

(f) Congressional findings of voting discrimination against language minorities; prohibition of English-only elections; other remedial measures

(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under subsection (c) of this section, the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to subsection (b) of this section, the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of subsection (a) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: *Provided,* That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan Natives and American Indians, if the predominate language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 20. Elective Franchise
Subchapter I-A. Enforcement of Voting Rights

§ 1973c. Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court

(a) Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or

standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made

within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term "purpose" in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

Ala. Code, 1975, § 6-5-570

Statement of legislative intent.

It is hereby declared by the Legislature of the State of Alabama that a crisis threatens the delivery of legal service to the people of Alabama and that the quality of legal services which should be made available to the citizens of this state is in jeopardy. It is the declared intent of this Legislature to insure that quality legal services continue to be available at reasonable costs to the citizens of the State of Alabama. This Legislature finds and declares that the increasing threat of legal actions against legal service providers contributes to an increase in the cost of legal services and places a heavy burden upon those who can least afford such cost and that the threat of such legal actions contributes to the expense of providing legal services to be performed by legal service providers which otherwise would not be considered necessary, and that the spiraling costs and decreasing availability of essential legal services caused by the threat of such litigation constitutes a danger to the welfare of the citizens of this state, and that this article should be given effect immediately to help control the spiraling cost of legal services and to insure the continued availability of vital legal services. In addition, this Legislature finds that legal service providers are experiencing great and increasing difficulties in obtaining professional liability insurance and that there is a great and rapid increase in the cost of professional liability insurance. This Legislature finds that both the availability and the cost of professional

liability insurance is in direct consequence to the threat of legal actions against Alabama legal service providers. It is the intent of the Legislature to establish a comprehensive system governing all legal actions against legal service providers. The Legislature finds that in order to protect the rights and welfare of all Alabama citizens and in order to provide for the fair, orderly and efficient administration of legal actions against legal service providers in the courts of this state, this article provides a complete and unified approach to legal actions against legal service providers and creates a new and single form of action and cause of action exclusively governing the liability of legal service providers known as a legal service liability action and provides for the time in which a legal service liability action may be brought and maintained is required.

Ala. Code, 1975, § 12-24-1

Recusal of justice or judge due to campaign contributions.

The Legislature intends by this chapter to require the recusal of a justice or judge from hearing a case in which there may be an appearance of impropriety because as a candidate the justice or judge received a substantial contribution from a party to the case, including attorneys for the party, and all others described in subsection (b) of Section 12-24-2. This legislation in no way intends to suggest that any sitting justice or judge of this state would be less than fair and impartial in any case. It merely intends for all the parties to a case and the public be made aware of campaign contributions made to a justice or judge by parties in a case and others described in subsection (b) of Section 12-24-2.

Ala. Code, 1975, § 12-24-2

Filing by judges, justices, parties, and attorneys of disclosure statements concerning campaign contributions.

(a) Any justice or judge of an appellate or circuit court of this state shall file, at least two weeks prior to the commencement of his or her term of office, with the Secretary of State, a statement disclosing the names and addresses of campaign contributors and the amount of each contribution made to him or her in the election immediately preceding his or her new term in office. Contributions from political action committees may be accepted if the committee furnishes to the Secretary of State according to existing law a list of names and addresses of contributors and an amount properly attributable to each contributor. When a justice or judge does not file this annual statement, the Secretary of State shall notify the Administrative Office of Courts and that office shall withhold further compensation to the justice or judge pending compliance with this section.

(b) The Supreme Court shall provide under the appropriate rules of court, a rule or rules which provide as follows: In an appellate court proceeding the attorneys for all parties shall serve certificates of disclosure on all attorneys of record before such court within 28 days after the filing of the notice of appeal; or in a circuit court within 28 days after notice of the identity of the judge presiding on the case. Each certificate shall state the amount, if any, of campaign

contributions by the respective individual donor or entity to any justice or judge of an appellate court where the case is pending, or if it is a trial court proceeding, the amount, if any, of campaign contributions by the respective individual donor or entity to the judge presiding over the case, made in the last election by the party or real parties in interest, any holder of five percent (5%) or more of a corporate party's stock, any employees of the party acting under that party's direction, any insurance carrier for the party which is potentially liable for the party's exposure in the case, the attorney for the party, other lawyers in practice with the attorney, and any employees acting under the direction of the attorney or acting under the direction of those in practice with the attorney. The failure to file the certificates of disclosure within the time frames set out above shall not affect the validity of the filing but the court may impose sanctions provided for by Rule 37(b) (2) (C, D) of the Alabama Rules of Civil Procedure, for the failure of a party to comply with this section after being ordered to do so.

(c) The action shall be assigned to a justice or judge regardless of the information contained in the certificates of disclosure. If the action is assigned to a justice or judge of an appellate court who has received more than four thousand dollars ($4,000) based on the information set forth in any one certificate of disclosure, or to a circuit judge who has received more than two thousand dollars ($2,000) based on the information set out in any one certificate of disclosure, then, within 14 days after all parties have filed a

certificate of disclosure, any party who has filed a certificate of disclosure setting out an amount including all amounts contributed by any person or entity designated in subsection (b), below the limit applicable to the justice or judge, or an amount above the applicable limit but less than that of any opposing party, shall file a written notice requiring recusal of the justice or judge or else such party shall be deemed to have waived such right to a recusal. Under no circumstances shall a justice or judge solicit a waiver of recusal or participate in the action in any way when the justice or judge knows that the contributions of a party or its attorney exceed the applicable limit and there has been no waiver of recusal.

Ala. Code, 1975, § 36-15-1

Duties generally.

The Attorney General shall keep his or her office at the capital city and perform the following duties:

(1)a. He or she shall give his or her opinion in writing, or otherwise, on any question of law connected with the interests of the state or with the duties of any of the departments, when required by the Governor.

...

(2) He or she shall also attend to all cases other than criminal that may be pending in the courts of this state, in which the state may be in any manner concerned, and shall appear in the courts of other states or of the United States, in any case in which the state may be interested in the result.

...

(7) At such time as the Attorney General deems appropriate, the Attorney General shall carefully examine all of the general statutes now in force, or which hereafter may be enacted by the Legislature from time to time, as to their clarity and constitutional validity.

(8) At such time as the Attorney General deems appropriate, the Attorney General may make a report in writing to the Governor and to the Chairman of the Judiciary Committee of the House of Representatives and of the Senate, pointing out the laws or parts of laws of Alabama which have been held invalid by courts of last resort since the last session of the

Legislature, and also making suggestions as to inaccuracies, inadvertences, mistakes and omissions in statutes, which, in his opinion, should be corrected.

(9) Upon the codification of the statutes provided for in Section 85 of the constitution, he or she shall advise with and assist the committees of the Senate and House of Representatives or the joint committee of the Legislature charged with the duty of examining and investigating the documents submitted by the code commission or any other agency provided by law for the preparation of a code of laws for submission to the Legislature.

...

The duties imposed by this section upon the Attorney General and his or her assistants shall be performed by the Attorney General personally or by his or her assistants under his or her supervision, direction, and control.

Any statute to the contrary notwithstanding, no attorney shall represent the State of Alabama, or any agency, department, or instrumentality of the state in any litigation in any court or tribunal unless the attorney has been appointed as a deputy attorney general or assistant attorney general.

Ala. Code, 1975, § 36-15-12

Institution and prosecution of legal proceedings in name of state.

The Attorney General is authorized to institute and prosecute, in the name of the state, all civil actions and other proceedings necessary to protect the rights and interests of the state.

Canon 3C(1), *Alabama Canons of Judicial Ethics.*

C. DISQUALIFICATION:

(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

(a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) He served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer in the matter, or the judge or such lawyer has been a material witness concerning it;

(c) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) He or his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a persons:

(i) Is named a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) Is to the judge's knowledge likely to be a material witness in the proceeding;